EXECUTION VERSION

ENERGY STORAGE FACILITY AGREEMENT

Between

ONEIDA ENERGY STORAGE LP

– and –

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

DATED as of the 21st day of December, 2022

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ENERGY STORAGE FACILITY AGREEMENT

This Energy Storage Facility Agreement is dated as of the 21st day of December, 2022, (the "**Contract Date**") between Oneida Energy Storage LP (the "**Supplier**"), and the Independent Electricity System Operator (the "**Sponsor**"). The Supplier and the Sponsor are each referred to herein as a "**Party**" and collectively as the "**Parties**".

RECITALS:

1. On January 27, 2022, the Ontario Minister of Energy issued a directive to the Sponsor pursuant to subsection 25.32 of the *Electricity Act, 1998* that was subsequently amended by a further directive issued on November 24, 2022 (as amended, the "**Ministerial Direction**") to enter into an agreement with the Supplier with respect to the Facility.

2. The Sponsor and the Supplier wish to execute this Agreement in order to formalize the long-term contractual arrangements for the Supplier to design, build, own, operate and maintain the Facility and to absorb Electricity from and re-inject Electricity directly into the IESO-Controlled Grid during the Term on the terms and conditions set out herein.

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions

In addition to the terms defined elsewhere herein, the following capitalized terms shall have the meanings stated below when used in this Agreement:

"**Additional Source of Funding**" has the meaning given to it in Section 4.8(a).

"**Affiliate**" means any Person that: (i) Controls a Party; (ii) is Controlled by a Party; or (iii) is Controlled by the same Person that Controls a Party.

"**Aggregate Merchant Revenue**" has the meaning ascribed to it in Section 4.7.

"**Agreement**" means this Energy Storage Facility Agreement as it may be amended, restated or replaced from time to time.

"**Ancillary Services**" has the meaning ascribed to it in the IESO Market Rules.

"**Apparent Monthly Round Trip Efficiency**" or "**AMRTE**" has the meaning ascribed to it in Exhibit E.

"**Arbitration Panel**" has the meaning ascribed to it in Exhibit K.

"**Arm's Length**" means, with respect to two or more Persons, that such Persons are not related to each other within the meaning of subsections 251(2), (3), (3.1), (3.2), (4), (5) and (6) of the *Income Tax Act* (Canada) or any substantially equivalent successor provisions or that such Persons, as a matter of fact, deal with each other at a particular time at arm's length.

"**Assignee**" has the meaning ascribed to it in Section 16.5(c).

"**Assignment Period**" has the meaning ascribed to it in Section 16.5(e).

"**Associated Relationship**" means the relationship between a meter at a Delivery Point and a Market Participant, as established by certain processes in the System Operator-operated MV-Web system or its equivalent.

"**Availability**" has the meaning ascribed to it in Exhibit C.

"**Availability Measurement Period**" has the meaning ascribed to it in Exhibit C.

"**Availability Window**" has the meaning ascribed to it in Section 3.1(b).

"**Bank Act**" means the *Bank Act* (Canada), as amended from time to time.

"**Business Day**" means a day, other than a Saturday or Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for the transaction of business.

"**Calculation Period**" has the meaning ascribed to it in Section 4.7(a).

"**Capacity Check Test**" has the meaning ascribed to it in Section 15.6(a).

"**Capacity Check Test Notice**" has the meaning ascribed to it in Section 15.6(a).

"**Capacity Check Test Window**" has the meaning ascribed to it in Section 15.6(a).

"**Capacity Confirmation**" has the meaning given to it in Section 15.6(c).

"**Capacity Products**" means any products related to the rated, continuous load-carrying capability of a generating facility to generate and Deliver Electricity at a given time.

"**Capacity Reduction Factor**" or "**CRF**" shall be an amount equivalent to 1.0 until, and to the extent, determined otherwise pursuant to Sections 15.6(f) and 15.6(g).

"**CCT Duration**" has the meaning ascribed to it in Section 15.6(a).

"**Claim**" means a claim or cause of action in contract, in tort, under any Laws and Regulations or otherwise.

"**Commercial Operation**" has the meaning ascribed in Section 2.4(a).

"**Commercial Operation Date**" or "**COD**" means the date on which Commercial Operation is first attained.

"**Commercially Reasonable Efforts**" means efforts which are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Agreement and which do not require the performing Party to expend any funds or assume liabilities, other than expenditures and liabilities which are reasonable in nature and amount in the context of the transactions contemplated by this Agreement.

"**Company Representative**" has the meaning ascribed to it in Section 15.1.

"**Completion and Performance Security**" has the meaning ascribed to it in Section 6.1(a).

"**Confidential Information**" means:

(a) all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with this Agreement, whether before or after its execution, including all new information derived at any time from any such confidential information, but excluding: (i) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party; (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representative, if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and (iv) information that is independently developed by the Receiving Party; and

(b) Mutually Confidential Information.

"**Confidentiality Undertaking"** has the meaning ascribed to it in Section 8.1(c).

"**Connection Agreement**" means the agreement or agreements required to be entered into between the Transmitter and the Supplier with respect to the connection of the Facility to the IESO-Controlled Grid in accordance with the Transmission System Code, and governing the terms and conditions of such connection.

"**Connection Capacity Limit**" means the maximum capacity that may be used by the Supplier in any request for an Impact Assessment, as set forth in Exhibit A.

"**Connection Costs**" mean those costs which are payable by the Supplier related to new or modified connection facilities, as defined by the Transmission System Code, for the reliable connection of the Facility to a Transmission System as more particularly specified pursuant to the System Impact Assessment, Customer Impact Assessment, and Transmission System Code for generator connections. For greater certainty, Connection Costs consist of Transmitter Connection Costs and Supplier Connection Costs, but shall not include Network Upgrade Costs.

"**Connection Point**" means the connection point, as defined in the IESO Market Rules, between the Facility and the IESO-Controlled Grid, as specified in Exhibit A. For greater certainty, the Connection Point is defined by reference to electrical connection points.

"**Contract Capacity**" or "**CC**" means, for a Contract Year, that figure, expressed in MW, set out in Exhibit B as the "Contract Capacity" for the applicable Contract Year, subject to adjustment as expressly provided in the Agreement.

"**Contract Date**" has the meaning given to that term in the first paragraph of this Agreement.

"**Contract Year**" means a twelve (12) month period during the Term which begins on the Term Commencement Date or an anniversary date thereof.

"**Control**" means, with respect to any Person at any time:

(i) holding, whether directly or indirectly, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or

(ii) the exercise of *de facto* control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests, by contract or trust or otherwise,

and "**Controlled**" has a corresponding meaning.

"**CPI**" or "**Consumer Price Index**" means the consumer price index for "All Items" published or established by Statistics Canada (or its successors) for any relevant calendar month in relation to the Province of Ontario.

"**Credit Rating**" means, (i) with respect to the Supplier (or the Guarantor, if a Guarantee is in place) (A) its long-term senior unsecured debt rating (not supported by third party credit enhancement) or (B) the lower of its issuer or corporate credit rating, as applicable, in either case being the lower provided by S&P, Moody's or DBRS or any other established and reputable debt rating agency, agreed to by the Parties from time to time, each acting reasonably, and (ii) with respect to any other Person, its long-term senior unsecured debt rating or its deposit rating as provided by Moody's, S&P, DBRS, or, if such Person is a financial institution, Fitch Ratings, or DBRS or any other established and reputable rating agency, as agreed to by the Parties, acting reasonably, from time to time.

"**Creditworthiness Value**" has the meaning ascribed to it in Section 6.4(b).

"**Customer Impact Assessment**" means a study conducted by a Transmitter to assess the impact of the connection of the Facility on other users of the IESO-Controlled Grid.

"**DBRS**" means Dominion Bond Rating Service Limited or its successors.

"**Delivered**" means, in relation to Electricity and applicable Related Products, delivered to the Delivery Point net of any Station Service Loads and other losses and adjustments in accordance with the Metering Plan, and "**Deliver**" and "**Delivery**" have corresponding meaning.

"**Delivery Point**" means a uniquely identified reference point determined as the point at which the Revenue Meter is installed in accordance with the IESO Market Rules, and used for settlement purposes.

"**Disclosing Party**", with respect to Confidential Information, is the Party and/or its Representatives providing or disclosing such Confidential Information and may be the Sponsor or the Supplier, as applicable; provided, however, that where such Confidential Information is Mutually Confidential Information, both the Sponsor and the Supplier shall be deemed to be the Disclosing Party.

"**Discriminatory Action**" has the meaning ascribed to it in Section 13.1.

"**Discriminatory Action Compensation**" has the meaning ascribed to it in Section 13.2.

"**Discriminatory Action Compensation Amount**" has the meaning ascribed to it in Section 13.3(e).

"**Discriminatory Action Compensation Notice**" has the meaning ascribed to it in Section 13.3(e).

"**Dollars**", or "**$**" means Canadian dollars and cents.

"**Economic Interest**" means, with respect to any Person other than a natural person, the right to receive or the opportunity to participate in any payments arising out of or return from, and an exposure to a loss or a risk of loss by, the business activities of such Person, by means, directly or indirectly, of an equity interest in a corporation, limited partnership interest in a limited partnership, partnership interest in a partnership, membership in a co-op, or, in the sole and absolute discretion of the Sponsor, other similar ownership interest.

"**Electricity**" means electric energy.

"**Electricity Act**" means the *Electricity Act, 1998* (Ontario), as amended or replaced from time to time.

"**Emission Reduction Credits**" means the credits associated with the amount of emissions to the air avoided by reducing the emissions below the lower of actual historical emissions or regulatory limits, including "emission reduction credits" as may be defined in any regulation as may be promulgated under the *Environmental Protection Act* (Ontario).

"**Energy Storage Technology Class**" means the class of energy storage facility applicable to the Facility, as set forth in Exhibit A.

"**Environmental Attributes**" means the interests or rights arising out of attributes or characteristics relating to the environmental impacts associated with an energy storage facility or the operation of an energy storage facility, and includes:

(a) rights to any fungible or non-fungible attributes, whether arising from the energy storage facility itself, from the interaction of the energy storage facility with the IESO-Controlled Grid or because of applicable legislation or voluntary programs established by Governmental Authorities;

(b) any and all rights relating to the nature of the energy source as may be defined and awarded through applicable legislation or voluntary programs. Specific environmental attributes include ownership rights to Emission Reduction Credits or entitlements resulting from interaction of the energy storage facility with the IESO-Controlled Grid or as specified by applicable legislation or voluntary programs, and the right to qualify and register these with competent authorities; and

(c) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing.

"**Environmental Attributes and Future Contract Related Products**" or "**EAFCRP**" has the meaning given to it in Exhibit J.

"**ESFA Suppliers**" means those suppliers that have entered into an energy storage facility agreement with the Sponsor as contemplated by the ministerial direction dated March 31, 2014 or their respective successors and permitted assigns, if applicable.

"**EST**" means the Eastern Standard Time applicable in the IESO-Administered Markets, as set forth in the IESO Market Rules.

"**Event of Default**" means a Supplier Event of Default or a Sponsor Event of Default.

"**Expedited RFP**" means the IESO's "Expedited Request for Proposals" (E-LT1), as may be amended from time to time.

"**Expedited RFP Contract**" means the contract to be entered into between suppliers and the Sponsor in connection with the Expedited RFP.

"**Facility**" means the energy storage facility described in Exhibit A.

"**Facility Amendment**" has the meaning ascribed to it in Section 2.1(b).

"**Final Windfall Amount**" has the meaning ascribed to it in Section 4.7(b).

"**Financial Closing**" means the date on which the conditions precedent referred to in the "Conditions Precedent to Financial Close" provisions of the applicable credit facility are satisfied or otherwise met to the satisfaction of, or are waived in writing by, all of the lenders under such credit facility.

"**Financial Indicators**" means the Tangible Net Worth and the Credit Rating.

"**FIPPA**" means the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended or supplemented from time to time.

"**FIPPA Records**" has the meaning ascribed to it in Section 8.5.

"**Fitch Ratings**" means Fitch Ratings, a division of Fitch Inc., or its successors.

"**Force Majeure**" has the meaning ascribed to it in Section 11.3.

"**Force Majeure Capacity Reduction Factor**" or "**FMCRF**" has the meaning ascribed to it in Exhibit J.

"**Force Majeure Outage Hour**" or "**FMOH**" has the meaning ascribed to it in Exhibit J.

"**Forced Outage**" has the meaning given to such term in the IESO Market Rules.

"**Further Capacity Check Test**" has the meaning given to it in Section 15.6(e).

"**Future Contract Related Products**" means all Related Products that relate to the Facility and that were not capable of being traded by the Supplier in the IESO-Administered Markets or other markets on or before the Contract Date.

"**GA Amount**" has the meaning ascribed to it in Exhibit E.

"**GAAP**" means Canadian or U.S. generally accepted accounting principles approved or recommended from time to time by the Canadian Professional Accountants of Canada or the Financial Accounting Standards Board, as applicable, or any successor institutes, applied on a consistent basis.

"**Global Adjustment**" means that adjustment made by the System Operator pursuant to section 25.33 of the Electricity Act, or its successor.

"**Good Engineering and Operating Practices**" means any of the practices, methods and activities adopted by a significant portion of the North American electric utility and energy storage industry as good practices applicable to the design, building, and operation of energy storage facilities of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent operator in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry and energy storage industry. Without limiting the generality of the foregoing and in respect of the operation of the Facility, Good Engineering and Operating Practices include taking Commercially Reasonable Efforts to ensure that:

(a) adequate materials, resources and supplies are available to meet the Facility's needs under reasonable conditions and reasonably anticipated abnormal conditions;

(b) sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly, efficiently and taking into account manufacturers' guidelines and specifications and are capable of responding to abnormal conditions;

(c) preventative, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation and taking into account manufacturers' recommendations and are performed by knowledgeable, trained and experienced personnel utilising proper equipment, tools and procedures; and

(d) appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and abnormal conditions.

"**Government of Canada**" means His Majesty the King in right of Canada.

"**Government of Ontario**" means His Majesty the King in right of Ontario.

"**Governmental Authority**" means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the System Operator,

the OEB, the Electrical Safety Authority, and any Person acting under the authority of any Governmental Authority.

"**Gross Reimbursable Energy Adder**" or "**GREA**" has the meaning given to it in Exhibit E.

"**Guarantee**" has the meaning ascribed to it in Section 6.4(a).

"**Guarantor**" has the meaning ascribed to it in Section 6.4(a).

"**HOEP**" or "**Hourly Ontario Energy Price**" has the meaning provided to it in the IESO Market Rules, and expressed in Dollars per MWh, and includes any applicable successor price, including any applicable successor locational marginal price.

"**HST**" means the harmonized sales tax exigible pursuant to the *Excise Tax Act* (Canada), as amended from time to time.

"**Hydro One**" means Hydro One Networks Inc. or its successor.

"**ICI**" has the meaning ascribed to it in Exhibit E.

"**ICI Successor Program**" has the meaning ascribed to it in Exhibit E.

"**IE Certificate**" means the certificate of an Independent Engineer in the form attached as Exhibit H.

"**IESO Market Rules**" means the rules governing the IESO-Controlled Grid and establishing and governing the IESO-Administered Markets, together with all market manuals, policies, and guidelines issued by the System Operator, all as amended or replaced from time to time.

"**IESO-Administered Markets**" has the meaning ascribed to it by the IESO Market Rules.

"**IESO-Controlled Grid**" has the meaning ascribed to it by the IESO Market Rules.

"**IFRS**" means the International Financial Reporting Standards, being the accounting standards and interpretations adopted or recommended from time to time by the International Accounting Standards Board (IASB) or any successor organization, applied on a consistent basis.

"**including**" means "including, without limitation".

"**Impact Assessment**" means (i) a Customer Impact Assessment; and (ii) a System Impact Assessment, as applicable.

"**Indemnifiable Loss**" has the meaning ascribed to it in Section 14.3.

"**Indemnitees**" has the meaning ascribed to it in Section 14.3.

"**Independent Engineer**" means an engineer that is:

(a) a Professional Engineer duly qualified and licensed to practice engineering in the Province of Ontario; and

(b) employed by an independent engineering firm which holds a certificate of authorization issued by Professional Engineers Ontario that is not affiliated with or directly or indirectly controlled by the Supplier and that does not have a vested interest in the design, engineering, procurement, construction or performance of the Facility.

"**Index Factor**" or "**IF**" has the meaning ascribed to it in Exhibit J.

"**Insolvency Legislation**" means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) and analogous legislation in effect in the provinces and territories of Canada and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction of such application or competence of such law), as they may be amended from time to time.

"**Interest Rate**" means the annual rate of interest established by the Royal Bank of Canada or its successor, from time to time, as the interest rate it will charge for demand loans in Dollars to its commercial customers in Canada and which it designates as its "**prime rate**" based on a year of 365 or 366 days, as applicable. Any change in such prime rate shall be effective automatically on the date such change is announced by the Royal Bank of Canada.

"**ITA**" means the *Income Tax Act* (Canada), as amended from time to time and all regulations promulgated thereunder from time to time.

"**ITC Program**" means the Clean Technology Investment Tax Credit announced by the Department of Finance (Canada) in the 2022 Fall Economic Statement, dated November 3, 2022, and includes any Laws and Regulations implementing such tax credit.

"**kV**" means kilovolt.

"**kW**" means kilowatt.

"**kWh**" means kilowatt hour.

"**Laws and Regulations**" means:

(a) applicable Canadian federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;

(b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;

(c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;

(d) any requirements under or prescribed by applicable common law; and

(e) the IESO Market Rules, as well as any manuals or interpretation bulletins issued by the System Operator from time to time that are binding on the Supplier.

"**LD Sum**" has the meaning ascribed to it in Section 10.2(f)(i).

"**Letter of Credit**" means one or more irrevocable and unconditional standby letters of credit issued by a financial institution listed in either Schedule I or II of the Bank Act or such other financial institution having a minimum Credit Rating of (i) A- with S&P, (ii) A3 with Moody's, (iii) A (low) with DBRS, or (iv) A- with Fitch Ratings, in substantially the Prescribed Form, and otherwise conforming to the provisions of Section 6.3.

"**LCE_B**" has the meaning given to it in Section 4.6(c).

"**LCE_{th}**" has the meaning given to it in Section 4.6(c).

"**LCE_m**" has the meaning given to it in Section 4.6(e).

"**Lithium Adjustment Period**" [redacted]

"**Longstop Date**" means the date identified as such in Exhibit F, as may be extended by one or more events of Force Majeure occurring before Commercial Operation.

"**Marginal RFP Price**" is the marginal (i.e., highest) "Fixed Capacity Payment" of an awarded contract to an energy storage facility under the Expedited RFP, converted from $/MW-business day to $/MW-month using a factor of 250/12.

"**Market Participant**" has the meaning ascribed to it by the IESO Market Rules.

"**Material Adverse Effect**" means any change (or changes taken together) in, or effect on, the affected Party that materially and adversely affects the ability of such Party to perform its obligations hereunder.

"**Measurement Canada Regulations**" means the rules governing measurement accuracy and approving and inspecting measuring devices issued by the Measurement Canada, as amended or replaced from time to time.

"**Merchant Revenue Target**" has the meaning ascribed to it in Section 4.7(a).

"**Metered Market Participant**" has the meaning ascribed to it in the IESO Market Rules.

"**Metering Plan**" means a document that is provided by the Supplier to be approved by the Sponsor and that (a) verifies that the revenue-quality interval meters used to measure Electricity conform with Measurement Canada Regulations, (b) provides technical specifications for meters, instrument transformers and relevant instruments for main metering and, if backup metering is required by the IESO Market Rules, as applicable, backup metering as well, (c) provides all required information, and equipment specifications needed to permit the Sponsor to remotely access, verify, estimate and edit for calculation purposes, and/or total Revenue Meter readings in order to accurately determine the Delivered and Withdrawn Electricity at the Delivery Point net of any Station Service Loads, and (d) provides the Sponsor with the State-of-Charge of the Facility at the same time intervals and accuracy as the Revenue Meter readings.

"**Milestone Date for Commercial Operation**" means the date identified as such in Exhibit F.

"**Ministerial Direction**" has the meaning ascribed to it in the recitals to this Agreement.

"**Monthly Payment**" or "**MP**" has the meaning ascribed to it in Exhibit J.

"**Moody's**" means Moody's Investors Service, Inc. or its successor.

"**Must-Offer Obligations**" has the meaning ascribed to it in Section 3.1(a).

"**Mutually Confidential Information**" means Confidential Information which has been identified by the Parties as Confidential Information of both the Sponsor and the Supplier.

"**MV-Web**" or "**MVPortal**" means the internet-based communications interface application for Market Participants supplied by the System Operator that allows Market Participants to access physical and financial data for the IESO-Administered Markets, and includes any systems or applications that may replace, supplement or succeed the MV-Web or MVPortal.

"**MW**" means megawatt.

"**MWh**" means megawatt hour.

"**Negative Outlook**" means, with respect to any credit rating agency providing a Credit Rating for purposes of this Agreement, a potential or threatened downgrade to the Credit Rating of any Person.

"**Net Revenue Requirement**" or "**NRR_B**" means that amount to be established pursuant to Section 4.6 as the "Net Revenue Requirement".

"**Net Revenue Requirement Adjustment**" or "**NRRA**" means that amount to be established pursuant to Section 4.6(b).

"**Net Revenue Requirement Indexing Factor**" or "**NRRIF**" means the decimal figure set out in Exhibit B.

"**Network Upgrade Costs**" means an amount equal to those costs, which may include design, engineering, procurement, construction, installation and commissioning costs, related to the Network Upgrades. For greater certainty, Network Upgrade Costs shall not include Connection Costs.

"**Network Upgrades**" means all additions, improvements, and upgrades to the network facilities, as defined by the Transmission System Code, for the connection of the Facility to the Transmission System, as more particularly specified pursuant to the System Impact Assessment, Customer Impact Assessment and Transmission System Code for generator connections.

"**New Agreement**" means a new agreement substantially in the form of this Agreement, which is to be entered into with a Secured Lender who is at Arm's Length with the Supplier or a Person identified by such Secured Lender following termination of this Agreement, as set out in Section 12.2(g).

"**New Oneida LP**" has the meaning given to it in Section 16.7(d).

"**Non-Refundable**" means, with respect to an amount of any Additional Source of Funding, the Supplier is not required to repay such amount or to make any other payments to the Government of Canada or the applicable Governmental Authority on account of such amount, including where the period of time has elapsed within which the Supplier can be required to repay such amount or to make any other payments to the Government of Canada or the applicable Governmental Authority on account of such amount. For clarity, any obligation of the Supplier, arising as a result of an Additional Source of Funding, to make payments to the Government of Canada or another Governmental Authority in respect of profit or net income earned by the Supplier shall be considered a repayment required to be made to the Government of Canada or the applicable Governmental Authority for purposes of this definition.

"**Notice**" has the meaning ascribed to it in Section 15.7(a).

"**Notice of Discriminatory Action**" has the meaning ascribed to it in Section 13.3(a).

"**Notice of Dispute**" has the meaning ascribed to it in Section 13.3(b).

"**OEB**" means the Ontario Energy Board, or its successor.

"**Outage**" has the meaning given to such term in the IESO Market Rules. Notwithstanding the foregoing, the submission of an Outage slip by the Supplier to the System Operator as a result of the Facility being State-of-Charge limited for the purpose of withdrawing or amending an offer within the period during which offers are not otherwise permitted by the IESO Market Rules to be amended or withdrawn shall be deemed for the purposes of this Agreement not to result in an Outage and instead be treated as a withdrawal or amendment of the corresponding offer.

"**Outage Hours**" means the duration, expressed in hours, of any Outages.

"**Party**" or "**Parties**" has the meaning given to it in the first paragraph of this Agreement.

"**Payment Date**" has the meaning ascribed to it in Section 5.3.

"**Peak Demand Periods**" has the meaning ascribed to it in Exhibit E.

"**Performance Test**" means a performance test equivalent to the requirements of a Capacity Check Test conducted for the purpose of achieving Commercial Operation witnessed by the Independent Engineer delivering the IE Certificate pursuant to Section 2.4(a)(i).

"**Person**" means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.

"**Planned Outage**" has the meaning given to such term in the IESO Market Rules.

"**Preliminary Notice**" has the meaning ascribed to it in Section 13.3(a).

"**Prescribed Form**" means, in relation to a form, the latest version of the corresponding form appearing on the Sponsor's Website, as may be amended or replaced by the Sponsor from time to time and without notice to the Supplier, or as provided by the Sponsor to the Supplier from time to time.

"**Prevailing Party**" has the meaning ascribed to it in Section 13.3(e)(ii).

"**Receiving Party**", with respect to Confidential Information, is the Party receiving Confidential Information and may be the Sponsor or the Supplier, as applicable.

"**Reference Net Revenue Requirement**" or "**NRR_R**" means that amount to be established calculated to Section 4.6(b).

"**Registered Facility**" has the meaning given to such term in the IESO Market Rules.

"**Regulatory Charge Credit**" or "**RCC**" has the meaning ascribed to it in Exhibit E.

"**Regulatory Energy Charges**" means all charges imposed by Laws and Regulations from time to time (other than Taxes and HST) on the Supplier based on the quantity of Withdrawn Electricity, including, hourly, daily and monthly uplifts, fees to participate in the IESO-Administered Markets, "Rural Rate Protection", and "Debt Retirement Charge", but excluding Global Adjustment. For greater certainty, Regulatory Energy Charges (i) do not include HOEP for purposes of determining Regulatory Charge Credit pursuant to Exhibit E, and (ii) do not include demand-based charges such as "Transmission Service Charge", the "Peak Demand Charge" or fixed charges.

"**Reimbursement Adjustment Factor**" or "**RAF**" has the meaning given to it in Exhibit E.

"**Reimbursement Reference Efficiency**" or "**RRE**" has the meaning ascribed to it in Exhibit E.

"**Related Products**" means all Capacity Products, Ancillary Services, transmission rights and any other products or services that may be associated with the Facility from time to time (but excluding Environmental Attributes produced by the Facility) that may be traded in the IESO-Administered Markets or other markets, or otherwise sold, and which shall be deemed to include products and services for which no market may exist, such as capacity reserves.

"**Reliability**" has the meaning ascribed to it in Exhibit C.

"**Reliability Reduction Factor**" or "**RRF**" has the meaning ascribed to it in Section 3.1(c).

"**Replacement Guarantee**" has the meaning ascribed to it in Section 6.4(c).

"**Replacement Provision(s)**" has the meaning ascribed to it in Section 1.7(c).

"**Reportable Events**" means any one or more of the following:

(a) obtaining environmental and project and site approvals and permitting for the Facility;

(b) completion of connection assessments, including receipt of approvals from the System Operator or the Transmitter;

(c) issuance of "Notice to Proceed" under the engineering, equipment procurement and construction contract(s) in respect of the Facility;

(d) Financial Closing in respect of the Facility;

(e) ordering of major equipment for the Facility;

(f) delivery of major equipment for the Facility;

(g) status of construction of the Facility;

(h) completion of construction of the Facility;

(i) status of construction of connection of the Facility to the Transmission System;

(j) connection of the Facility to the Transmission System; and

(k) Commercial Operation of the Facility.

"**Representatives**" means a Party's directors, officers, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents and those of its Affiliates, and the agents and advisors of such Persons. While the Sponsor is the Independent Electricity System Operator, this definition shall also include the Government of Ontario, and its respective directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents.

"**Revenue Meter**" means the equipment located at the "Registered Wholesale Meter" location (as such term is defined in the IESO Market Rules), and used for settlement purposes.

"**RMB**" mean renminbi yuan.

"**S&P**" means the Standard and Poors Rating Group (a division of McGraw-Hill Inc.) or its successors.

"**Season**" means Summer or Winter, as applicable, and "**Seasons**" means collectively Summer and Winter seasons.

"**Secured Lender**" means a lender under a Secured Lender's Security Agreement.

"**Secured Lender's Security Agreement**" means an agreement or instrument, including a deed of trust or similar instrument securing loans, notes, bonds or debentures or other indebtedness, liabilities or obligations, containing or constituting a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Supplier's Interest granted by the Supplier, or with respect to the securities of the Supplier granted by the holder of such securities, that is security for any indebtedness, liability or obligation of the Supplier, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.

"**Senior Conference**" has the meaning ascribed to it in Section 16.1.

"**Settlement Month**" has the meaning ascribed to it in Section 5.2(a), provided that if the first or last Settlement Month in the Term is less than a full calendar month, for the purposes of Exhibit J, such month shall be equal to the number of days of the Term in such month.

"**Sponsor**" has the meaning given to it in the first paragraph of this Agreement and includes such Person's successors and permitted assigns.

"**Sponsor Event of Default**" has the meaning ascribed to it in Section 10.3.

"**Sponsor Statement**" has the meaning ascribed to it in Section 12.2(g).

"**Sponsor's Website**" means the website of the Sponsor located at uniform resource locator (URL) http://ieso.ca/ or such other URL, or other electronic or non-electronic format, as the Sponsor may provide to the Supplier from time to time.

"**State-of-Charge**" means, with respect to the Facility at any time, the percentage of the total energy storage capability that is being used to store energy. A State-of-Charge of 100% shall mean that the total energy storage capability is being used to store energy, while a State-of-Charge of 0% shall mean that the total energy storage capability is available to store energy.

"**Statement**" has the meaning ascribed to it in Section 5.2(a).

"**Station Service Loads**" means energy consumed to power the on-site maintenance and operation of storage facilities but excludes (i) energy consumed in association with activities which could be ceased or moved to other locations without impeding the normal and safe operation of the Facility and (ii) energy stored for future Delivery. Station Service Loads shall not be separately metered and instead the Facility will be net-metered by the System Operator.

"**Storage Capacity**" means the Contract Capacity at the applicable time, multiplied by four hours.

"**Subcontractor**" means a third party that has been retained by the Supplier, or another Subcontractor, through a written contract to provide goods or services directly that are directly related to the development or construction of the Facility, and for clarity includes any engineering, procurement and construction contractor.

"**Summer**" means the period commencing on May 1 and ending on October 31 for any given calendar year.

"**Supplier**" has the meaning given to it in the first paragraph of this Agreement and includes such Person's successors and permitted assigns.

"**Supplier Connection Costs**" means an amount equal to those Connection Costs associated with providing the required connection facilities to connect the Facility to a Transmission System (including costs associated with facilities provided or work performed by the Transmitter on a third-party basis to the Supplier) that are not Transmitter Connection Costs.

"**Supplier Event of Default**" has the meaning ascribed to it in Section 10.1.

"**Supplier Non-acceptance Notice**" has the meaning ascribed to it in Section 13.3(e).

"**Supplier's Certificate**" means a certificate in the form set out in Exhibit I.

"**Supplier's Interest**" means the right, title and interest of the Supplier in or to the Facility and this Agreement, or any benefit or advantage of any of the foregoing.

"**System Impact Assessment**" means a study conducted by the System Operator pursuant to Section 6.1.5 of Chapter 4 of the IESO Market Rules (or any future equivalent thereof), to assess the impact of a new connection of the Facility or of the modification of an existing connection of the Facility on the performance of the IESO-Controlled Grid and the reliability of the integrated power system.

"**System Operator**" means the Independent Electricity System Operator of Ontario established under Part II of the *Electricity Act*, and its successors, acting pursuant to its authority to make, administer and enforce the IESO Market Rules.

"**Tangible Net Worth**" means in respect of the Supplier or a Guarantor, at any time and without duplication, an amount determined in accordance with GAAP (or IFRS, if the Supplier or Guarantor has adopted such standard), and calculated as (a) the aggregate book value of all assets, minus (b) the aggregate book value of all liabilities, minus (c) the sum of any amounts shown on account of patents, patent applications, service marks, industrial designs, copyrights, trade marks and trade names, and licenses, prepaid assets, goodwill and all other intangibles.

"**Taxes**" means all ad valorem, property, occupation, severance, production, transmission, utility, gross production, gross receipts, sales, use, excise and other taxes, governmental charges, licenses, permits and assessments, other than (i) HST and (ii) taxes based on profits, net income or net worth.

"**Technology Vendor**" means [redacted]

"**Term**" has the meaning ascribed to it in Section 9.1(b).

"**Term Commencement Date**" has the meaning ascribed to it in Section 9.1(b).

"**Termination Date**" means the date on which this Agreement terminates as a result of an early termination of this Agreement in accordance with this Agreement.

"**Test Capacity**" means, in respect of a Capacity Check Test, the Electricity output of the Facility for the hour of the Capacity Check Test with the lowest Electricity output, divided by one hour.

"**Transmission System**" means a system for conveying Electricity at voltages of more than 50 kV and includes any structures, equipment or other things used for that purpose.

"**Transmission System Code**" means the "Transmission System Code" approved by the OEB and in effect from time to time, which, among other things, sets the standards for a Transmitter's existing Transmission System and for expanding the Transmitter's transmission facilities in order to connect new customers to it or accommodate increase in capacity or load of existing customers.

"**Transmitter**" means a Person licensed as a "transmitter" by the OEB in connection with a Transmission System.

"**Transmitter Connection Costs**" means those Connection Costs associated with those modifications to Transmitter-owned facilities required to connect the Facility to a Transmission System that only the Transmitter can perform, and that are payable by the Supplier to the Transmitter as required by the Transmission System Code.

"**Windfall Amount**" has the meaning ascribed to it in Section 4.7(a)(i).

"**Windfall LC**" has the meaning ascribed to it in Section 4.7(a)(ii).

"**Windfall Security Amount**" has the meaning ascribed to it in Section 4.7(a)(ii).

"**Winter**" means the period commencing on November 1 of a calendar year and ending on April 30 of the subsequent calendar year.

"**Withdraw**" means, in relation to Electricity, to withdraw from the Transmission System at the Delivery Point, subject to adjustments in accordance with the Metering Plan.

"**Withdrawn**" means, in relation to Electricity, withdrawn from the Delivery Point adjusted in accordance with the Metering Plan and includes all electricity withdrawn for purposes of Station Service Load and charging the Facility.

"**WSIA**" means the *Workplace Safety and Insurance Act, 1997* (Ontario).

1.2 Exhibits

The following Exhibits are attached to and form part of this Agreement:

Exhibit A	Facility Description
Exhibit B	Contract Capacity, Net Revenue Requirement, and Other Stated Variables
Exhibit C	Availability and Reliability
Exhibit D	Form of Secured Lender Consent and Acknowledgment Agreement
Exhibit E	Determination of Regulatory Charge Credit
Exhibit F	Milestone Dates
Exhibit G	Not Used
Exhibit H	Form of Independent Engineer Certificate
Exhibit I	Form of Supplier's Certificate
Exhibit J	Calculation of Monthly Payment
Exhibit K	Arbitration Procedures Applicable to Sections 1.7 and 1.8

1.3 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated, and shall be paid, in Dollars.

1.6 IESO Market Rules and Statutes

Unless otherwise expressly stipulated, any reference in this Agreement to the IESO Market Rules or to a statute or to a regulation or rule promulgated under a statute or to any provision of a statute, regulation or rule shall be a reference to the IESO Market Rules, statute, regulation, rule or provision as amended, re-enacted or replaced from time to time. In the event of any conflict or inconsistency with the IESO Market Rules and the terms of this Agreement, the IESO Market Rules shall govern to the extent of such conflict or inconsistency.

1.7 Invalidity, Unenforceability, or Inapplicability of Indices and Other Provisions

In the event that either the Sponsor or the Supplier, acting reasonably, considers that any provision of this Agreement is invalid, inapplicable, or unenforceable, or in the event that any index or price quotation referred to in this Agreement, ceases to be published, or if the basis therefor is changed materially, then:

(a) if a provision is considered to be invalid, inapplicable or unenforceable, then the Party considering such provision to be invalid, inapplicable or unenforceable may propose, by notice in writing to the other Party, a replacement provision and the Sponsor and the Supplier and, at the Sponsor's discretion, those ESFA Suppliers who are required by the Sponsor to participate, shall then engage in good faith negotiations to replace such provision with a valid, enforceable, and applicable provision, the economic effect of which substantially reflects that of the invalid, unenforceable, or inapplicable provision which it replaces;

(b) if any index or price quotation referred to in this Agreement ceases to be published, or if the basis therefor is changed materially, then the Sponsor and the Supplier and, at the Sponsor's discretion, those ESFA Suppliers who are required by the Sponsor to participate, shall engage in good faith negotiations to substitute an available replacement index or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index or price quotation that has so ceased or changed and this Agreement shall be amended as necessary to accommodate such replacement index or price quotation;

(c) if the Parties agree that amendments to this Agreement are required pursuant to this Section 1.7 and the negotiations set out in Sections 1.7(a) or 1.7(b) are not successful, then if the Parties are unable to agree on all such issues and any amendments required to this Agreement (the "**Replacement Provision(s)**") within thirty (30) days after either the giving of the notice under Section 1.7(a) or the occurrence of the event in Section 1.7(b), then the Replacement Provision(s) shall be determined by mandatory and binding arbitration from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration,

which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Sponsor to implement such award of the Arbitration Panel set out in Section 1.7(d)(iii); and

(d) the terms of this Agreement shall be amended either:

(i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.7(c);

(ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Section 1.7(c); or

(iii) by an amendment prepared by the Sponsor made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.7(c), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as applicable, having effect as of the date of the invalidity, inapplicability or unenforceability or from and after the date that the relevant index or quotation ceased to be published or the basis therefor is changed materially, as the case may be.

1.8 Change in IESO Market Rules

(a) To the extent that the Board of Directors of the System Operator has given final approval to an amendment or addition to the IESO Market Rules following the Contract Date, unless such amendment or addition is stayed by the OEB, and as a result of such amendment or addition, the Supplier is or would be unable to comply with the Must-Offer Obligations without incurring material costs, where the Supplier would not reasonably incur such material costs if the Facility were operating in the IESO Administered Markets without this Agreement being in place, then:

(i) the Supplier shall notify the Sponsor promptly and, in any event, within ten (10) Business Days upon becoming aware of the consequences of such change;

(ii) the Parties and, at the Sponsor's discretion, those ESFA Suppliers who are required by the Sponsor to participate, shall engage in good faith negotiations to amend the affected Must-Offer Obligations in this Agreement and the respective agreements of those ESFA Suppliers on the basis that such amendments shall alter or reduce the applicable Must-Offer Obligations only to the extent necessary to eliminate the need to incur such material costs as set out above, where such altered or reduced Must-Offer Obligations are as close as possible to the Must-Offer Obligations prior to such alteration or reduction; and

(iii) if the Parties agree that amendments to this Agreement are required pursuant to Section 1.8(a)(ii) but fail to reach agreement on such amendments within

sixty (60) days after the change in the IESO Market Rules became effective, the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement (if any) made by the Sponsor to implement such award of the Arbitration Panel set out in Section 1.8(b)(iii).

For greater certainty, the amendments contemplated in this Section 1.8(a) shall not involve an increase in the Net Revenue Requirement, unless otherwise agreed by the Parties.

(b) The terms of this Agreement shall be amended either:

(i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.8(a)(iii);

(ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.8(a)(iii); or

(iii) by an amendment prepared by the Sponsor made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.8(a)(iii), where the Supplier failed to participate in such arbitration, with such agreement or amendment, as the case may be, having effect from and after the date that the change in the IESO Market Rules became effective.

(c) This Section 1.8 shall not apply to the circumstances addressed in Section 1.7.

1.9 Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement. There are no warranties, conditions, or representations (including any that may be implied by statute) and there are no agreements in connection with the subject matter of this Agreement except as specifically set forth or referred to in this Agreement. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made by a Party to this Agreement, or its directors, officers, employees or agents, to the other Party to this Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement.

1.10 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of any provision of this Agreement shall be binding unless executed in writing by the Party (or Parties) to be bound thereby, and in the case of a waiver issued by the Sponsor or an amendment, such waiver or amendment, as applicable, shall not be binding on the Sponsor unless it has been executed by an individual identified in such waiver or amendment as "Contract Management". No waiver of any

provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply unless otherwise expressly provided.

1.11 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.12 Preparation of Agreement

Notwithstanding the fact that this Agreement was drafted by the Sponsor's legal and other professional advisors, the Parties acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision of this Agreement shall not be construed or interpreted against the Sponsor or in favour of the Supplier when interpreting such term or provision, by virtue of such fact.

ARTICLE 2
DESIGN AND OPERATION

2.1 Design and Construction of the Facility

(a) The Supplier agrees to design and build the Facility using Good Engineering and Operating Practices and meeting all relevant requirements of the IESO Market Rules, Transmission System Code, the Connection Agreement, in each case, as applicable, and all other Laws and Regulations. The Supplier shall ensure that the Facility is designed, engineered and constructed to operate in accordance with the requirements of this Agreement.

(b) The Supplier shall at no time after the Contract Date modify, vary, or amend in any material respect any of the features or specifications of the Facility outlined in Exhibit A (a "**Facility Amendment**") without first notifying the Sponsor in writing and obtaining the Sponsor's consent in writing, not to be unreasonably withheld, delayed or conditioned, provided that any change to the Contract Capacity shall be at the Sponsor's sole and absolute discretion. It shall not be unreasonable for the Sponsor to withhold or delay its consent to any modification, variation or amendment which would, or would be likely to, materially adversely affect the ability of the Supplier to comply with its obligations under this Agreement. Any Facility Amendment that has not been consented to by the Sponsor shall, if not removed within ten (10) Business Days after such Facility Amendment occurred, constitute a Supplier Event of Default. Without limiting the generality of the foregoing, and for purposes of this paragraph, the failure of the Facility to have a Connection Point as described in Exhibit A shall be deemed to be a Facility Amendment. Notwithstanding anything to the contrary in this Section 2.1(b), the replacement of battery cells of the Facility on a like-for-like or substantially similar basis for the purpose of maintaining, preserving or restoring the capability of the Facility shall not be considered a Facility Amendment.

(c) If the Sponsor's consent in writing has been given in relation to a reduction in the Contract Capacity pursuant to Section 2.1(b), the Contract Capacity shall be deemed to be reduced to the lower amount, effective at the time stated in such notice. If the Sponsor's consent has been given in relation to an increase in the Contract Capacity pursuant to Section 2.1(b), the Contract Capacity shall be increased to the higher amount effective as of the time stated in such notice, provided that such increase shall not be effective until the Supplier performs a Capacity Check Test confirming the increased amount of the Contract Capacity.

2.2 Additional Development and Construction Covenants

(a) The Supplier agrees that the Facility shall be located in the Province of Ontario. The Supplier agrees that the Facility shall have a Connection Point as set out in Exhibit A and shall affect supply and demand on the IESO-Controlled Grid.

(b) The Supplier agrees to arrange, at its expense (including the payment of all Supplier Connection Costs), for all Facility connection requirements in accordance with the Connection Agreement to permit the Delivery and Withdrawal of Electricity from the IESO-Controlled Grid. If requested by the Sponsor, the Supplier agrees to provide to the Sponsor a copy of any applicable Impact Assessments within ten (10) Business Days of the Supplier's receipt of each of such documents or within ten (10) Business Days of the Sponsor's request subsequent to the Supplier's receipt of each such documents. The Supplier represents and warrants that as of the Contract Date it has not and covenants that it shall not apply in any Impact Assessment for a connection capacity with the Transmitter in excess of the Connection Capacity Limit without prior written consent of the Sponsor which shall not be unreasonably withheld, delayed or conditioned.

(c) The Supplier agrees to provide, at its expense, all power system components and associated facilities on the Supplier's side of the Connection Point, including all connection lines from the Facility to the Connection Point and all transformation, switching, synchronizing, protection and control, teleprotection, metering, and auxiliary equipment (such as grounding, monitoring and testing equipment), pursuant to requirements deemed necessary by the IESO Market Rules, and the Transmitter, from time to time, to protect the safety and security of the IESO-Controlled Grid and each of its customers. The equipment to be so provided by the Supplier shall include such electrical equipment as the IESO Market Rules or the Transmitter require, from time to time, for the safe and secure operation of the IESO-Controlled Grid as required by the IESO Market Rules and the Transmission System Code.

(d) Without limitation to the Supplier's obligations under this Article 2, the Supplier shall be responsible for acquiring all necessary permits, regulations and approvals as well as obtaining any community support and the support of affected Indigenous communities, in each case as required under Laws and Regulations for the construction of the Facility.

2.3 Milestone Date for Commercial Operation

(a) The Supplier shall cause Commercial Operation of the Facility to be achieved in a timely manner and by the Milestone Date for Commercial Operation. The Supplier acknowledges that even if the Facility has not achieved Commercial Operation by the Milestone Date for Commercial Operation, the Term shall nevertheless expire on the day before the twentieth (20^{th}) anniversary of the Milestone Date for Commercial Operation, pursuant to Section 9.1 (subject to the Supplier's right to restore the Term pursuant to Section 9.1(c)).

(b) If there occurs or arises any incident, event or circumstance which results, or is likely to result, in a delay in the aggregate of thirty (30) days or more in the achievement of Commercial Operation following the Milestone Date for Commercial Operation, including delays arising from events of Force Majeure, the Supplier shall promptly (and, in any event, within ten (10) Business Days) notify the Sponsor and the Parties shall meet to discuss strategies for eliminating or reducing, to the extent possible and practicable to do so, the impact of such delay on the development, construction and/or commissioning of the Facility in order to achieve Commercial Operation by the Milestone Date for Commercial Operation.

(c) Notwithstanding Section 2.3(a) and Article 10, if Commercial Operation is achieved on or before the Longstop Date, (i) the failure to achieve Commercial Operation on or before the Milestone Date for Commercial Operation shall not constitute a Supplier Event of Default, (ii) notwithstanding Sections 16.11 and 16.12, the sole and exclusive remedy for the Sponsor in such case shall be the reduction of the duration of the Term pursuant to Section 9.1(b) (subject to the Supplier's right to restore the Term pursuant to Section 9.1(c)), and (iii) the Sponsor irrevocably waives any Claims it may have with respect to Commercial Operation being achieved after the Milestone Date for Commercial Operation.

2.4 Requirements for Commercial Operation

(a) The Facility will be deemed to have achieved "**Commercial Operation**" pursuant to this Agreement at the point in time when, as subsequently confirmed by the Sponsor in a written notice to the Supplier as described in Section 2.4(b), the Sponsor has received:

(i) directly from the Independent Engineer, an IE Certificate, in the form set out in Exhibit H, stating that:

(A) the Facility has been completed in all material respects, excepting punch list items that do not materially and adversely affect the ability of the Facility to operate in accordance with this Agreement;

(B) the Connection Point of the Facility is at the location specified in Exhibit A;

(C) the Facility has been constructed, connected, commissioned and synchronized to the IESO-Controlled Grid, such that at least 100%

of the Contract Capacity and the Storage Capacity for the Facility is available to Withdraw, store and Deliver Electricity in accordance with the requirements of all applicable Laws and Regulations; and

(D) the Facility has passed a Performance Test;

(ii) a Supplier's Certificate, in the form set out in Exhibit I, together with such documentation required to be provided under such form to the Sponsor;

(iii) an updated Metering Plan in the Prescribed Form;

(iv) a single line electrical drawing that identifies the as-built Connection Point sealed by a professional engineer licensed in Ontario, clearly showing area transmission and distribution facilities, including the transformer station that is electrically closest to the Facility; and

(v) copies of all permits and approvals issued by Governmental Authorities which are required to construct, operate and maintain the Facility in accordance with Laws and Regulations.

The Supplier shall have the right to retake Performance Tests as required in order to achieve Commercial Operation (but without limiting the Sponsor's right under Section 10.1(k)), and there shall be no minimum period of time that must pass between Performance Tests. The Sponsor or its Representative shall be entitled, at the Sponsor's option, to attend the Performance Tests performed pursuant to Section 2.4(a)(i)(D), and the Supplier shall provide to the Sponsor confirmation in writing of the timing of such Performance Tests at least five (5) Business Days in advance.

(b) The Sponsor shall notify the Supplier in writing within ten (10) Business Days following receipt of the IE Certificate and the Supplier's Certificate re: Commercial Operation as to whether the IE Certificate, Supplier's Certificate, and the documentation provided by the Supplier under the Supplier's Certificate are acceptable to the Sponsor, acting reasonably. If the Sponsor determines that the IE Certificate, Supplier's Certificate, or such documentation provided by the Supplier under the Supplier's Certificate are not acceptable to the Sponsor, the Sponsor shall at the time of such notification provide to the Supplier reasonable particulars in respect of the deficiencies in the IE Certificate, Supplier's Certificate, or such documentation.

2.5 Sponsor Information During Design and Construction

Prior to COD, the Supplier shall provide the Sponsor with progress reports as follows:

(a) By the fifteenth (15th) day of each calendar quarter following the Contract Date and continuing until COD, the Supplier shall provide the Sponsor with quarterly progress reports in the Prescribed Form, describing the status of efforts made by the Supplier to meet the Milestone Date for Commercial Operation and the progress of the design and construction work and the status of permitting and approvals

relating to the Facility. Such quarterly progress reports shall report on the progress of all applicable Reportable Events. At the Sponsor's request, the Supplier shall provide an opportunity for the Sponsor to meet with appropriate personnel of the Supplier to discuss and assess the contents of any such quarterly progress report. The Supplier acknowledges that the quarterly progress reports and photographs of the Facility may be posted or printed by the Sponsor on its website or in publications.

(b) In addition to the quarterly progress reports it is required to provide pursuant to Section 2.5(a), the Supplier shall also provide the Sponsor with notice of any material incident, event or concern which may occur or arise during the course of the development, construction or commissioning of the Facility, promptly and, in any event, within ten (10) Business Days following the later of: (i) the Supplier becoming aware of any such incident, event or concern occurring or arising; and (ii) the Supplier becoming aware of the materiality of same, with such timing in each case based upon the Supplier having acted in accordance with Good Engineering and Operating Practices.

2.6 Operational Covenants

(a) From and after the beginning of the hour ending 01:00 hours (EST) of the Term Commencement Date, the Supplier agrees to operate the Facility in accordance with the terms of this Agreement, and the Monthly Payment and Regulatory Charge Credit shall begin to accrue and be payable in accordance with Article 4 and Article 5.

(b) The Supplier agrees to own the Facility during the Term and operate and maintain the Facility in accordance with the terms of this Agreement, Good Engineering and Operating Practices, and meeting all applicable requirements of the IESO Market Rules, the Transmission System Code, any connection agreements with the System Operator, or a Transmitter. For certainty, the Parties acknowledge that the Sponsor is not purchasing from the Supplier, nor is the Supplier selling to the Sponsor, any Electricity or Related Products, provided however, nothing in this sentence restricts the Supplier's right to sell Electricity and Related Products attributable to the Contract Capacity into the IESO-Administered Markets.

(c) The Supplier agrees to assume all risk, liability and obligation and to indemnify, defend and hold harmless the Indemnitees in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment, at or related to, the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* (Ontario), the *Dangerous Goods Transportation Act* (Ontario) or other similar legislation, whether federal or provincial and all as amended from time to time, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees.

(d) Except as expressly provided for in this Agreement, a Supplier who is also a load facility under the IESO Market Rules shall be solely responsible for all charges (net of any applicable credits) in relation to Electricity consumed by it in order to operate the Facility in accordance with this Agreement.

2.7 Metering and Dispatch Capabilities

(a) The Supplier shall have a Metering Plan approved by the Sponsor and shall deliver a copy in the Prescribed Form to the Sponsor for its approval no later than ninety (90) days prior to the earlier of the Milestone Date for Commercial Operation and the anticipated Commercial Operation Date. The Sponsor shall review the Metering Plan submitted by the Supplier and either approve the Metering Plan or provide the Supplier with its comments within forty-five (45) days after receipt. The Sponsor shall, when considering whether to approve the Metering Plan, have regard to those Electricity matters in the Metering Plan that have received System Operator approval. If, within fifteen (15) days after the Sponsor has delivered its comments on the Metering Plan to the Supplier, the Parties are not able to agree on the final terms of the Metering Plan, the Parties shall submit the matter for determination by an Independent Engineer agreed upon by the Parties, acting reasonably, whose determination on the terms of the Metering Plan shall be final and binding on the Parties (and from whose determination there shall be no recourse to the dispute resolution provisions of this Agreement). The Metering Plan shall be updated promptly, and, in any event, within ten (10) Business Days after any change to the metering installation occurs.

(b) The Supplier covenants and agrees to provide, at its expense, separate meter(s) and ancillary metering and monitoring equipment as required by the IESO Market Rules. The Sponsor may obtain access internally to the revenue-quality interval meter data of the Facility provided to the System Operator to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive for any loss adjustment factors, or, if required, the Supplier shall provide the Sponsor, for the purposes of this Agreement, the right to view, download, and request such revenue-quality interval meter data of the Facility by establishing an Associated Relationship with the Sponsor at each Delivery Point of the Facility within the System Operator's "Meter Data Management" or "MDM" and "Meter Data Distribution" or "MDD" systems or their successors, at no cost to the Sponsor.

(c) The Supplier will provide the Sponsor with a commissioning report for all Revenue Meter(s) referenced in the Metering Plan prior to any use of metering data for the purposes contemplated by this Agreement. The Sponsor retains the right to audit, at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Metering Plan, and the metering data of the Facility to confirm the accuracy of such data. The Supplier shall not make any material changes to the Metering Plan following approval by the Sponsor or determination by the Independent Engineer (as applicable) without the prior written approval of the Sponsor, acting reasonably.

2.8 Insurance Covenants

(a) The Supplier shall put in effect and maintain, or cause its Subcontractors, where appropriate, to maintain, with insurers licensed in Ontario, from the commencement of construction of the Facility to the Commercial Operation Date, at its own cost and expense, all the necessary and appropriate insurance required under all applicable Laws and Regulations as well as those that a prudent Person in the business of developing and operating the Facility would maintain, including policies for "all-risk" property insurance covering not less than the probable maximum loss of the Facility; "all-risk" equipment breakdown insurance; "wrap up" liability insurance or either an endorsement to the commercial general liability insurance policy to provide for coverage during construction or other evidence that the "commercial general liability" policy would respond to a third party claim during construction; and "commercial general liability" insurance in an amount (inclusive of any applicable umbrella policies) of not less than $10 million each occurrence and in the aggregate, with either a stand-alone policy for environmental incidents or a rider to extend coverage to include environmental incidents.

(b) The Supplier shall put in effect and maintain, or cause its Subcontractors, where appropriate, to maintain, with insurers licensed in Ontario, from the Commercial Operation Date to the expiry of the Term, at its own cost and expense, all the necessary and appropriate insurance required under all applicable Laws and Regulations as well as those that a prudent Person in the business of developing and operating the Facility would maintain including policies for "all-risk" property insurance covering not less than the probable maximum loss of the Facility, "boiler and machinery" insurance and "commercial general liability" insurance with either a stand-alone policy for environmental incidents or a rider to extend coverage to include environmental incidents.

(c) Any policies described in this Section 2.8 must (i) for any property insurance, contain a waiver of subrogation in favour of the Indemnitees; and (ii) for any liability insurance, include the Indemnitees as additional insureds with respect to liability arising in the course of performance of the obligations under, or otherwise in connection with, this Agreement, in which case the policy shall be non-contributing and primary with respect to coverage in favour of the Indemnitees. The limit for liability policies described in this Section 2.8 shall be for an amount appropriate for the size and scope of the Facility.

(d) The Supplier shall provide the Sponsor with a certificate of the insurance policies required in this Section 2.8 which confirms the relevant coverage, including endorsements on or before the commencement of the construction of the Facility, and renewals or replacements on or before the expiry of any such insurance. Upon request of the Sponsor from time to time, the Supplier shall provide the Sponsor with a certified true copy of the insurance policies required in this Section 2.8 which confirms the relevant coverage, including endorsements. Any such policies may be redacted as to confidential information of the Supplier not reasonably required by the Sponsor to confirm that the insurance policy meets the requirements of this Agreement.

(e) If the Supplier is subject to the WSIA, it shall submit a valid clearance certificate of WSIA coverage to the Sponsor prior to the commencement of construction of the Facility. In addition, the Supplier shall, from time to time at the request of the Sponsor, provide additional WSIA clearance certificates. The Supplier shall pay when due, and shall ensure that each of its Subcontractors pays when due, all amounts required to be paid by it and its Subcontractors, from time to time from the commencement of construction of the Facility, under the WSIA, failing which the Sponsor shall have the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay any amount due pursuant to the WSIA and unpaid by the Supplier or its Subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to this Agreement together with all costs incurred by the Sponsor in connection therewith.

2.9 Compliance with Laws and Regulations and Registration with the System Operator

(a) The Sponsor and the Supplier shall each comply, in all material respects, with all Laws and Regulations required to perform or comply with their respective obligations under this Agreement.

(b) The Sponsor and the Supplier shall each furnish, in a timely manner, information to Governmental Authorities and shall each obtain and maintain in good standing any licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licensing as is required by the OEB. Without limiting the generality of the foregoing, the Supplier agrees to meet all applicable Facility registration requirements as specified in the IESO Market Rules.

2.10 Environmental Attributes

(a) The Supplier shall have the right, from time to time, to sell or monetize Environmental Attributes subject to the Sponsor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. With respect to any proceeds from the sale or other monetization of Environmental Attributes during or in respect of the Term, the Supplier shall be solely entitled to the first $100,000, and thereafter the Sponsor is entitled to fifty percent (50%) of the gross proceeds from any further sales or monetization.

(b) If the Supplier has sold or monetized Environmental Attributes in accordance with Section 2.10(a), the Supplier shall notify the Sponsor no later than thirty (30) days following the end of each Settlement Month as to the gross proceeds from such sale(s) or monetization(s) received by the Supplier during that Settlement Month, so that such gross proceeds can be taken into account in determining the Monthly Payment owed to the Supplier in respect of such Settlement Month.

2.11 Future Contract Related Products

(a) The Supplier shall provide the Sponsor with prior written notice of the development by the Supplier of any Future Contract Related Products, from time to time.

(b) The Supplier shall require the Sponsor's consent to monetize the Future Contract Related Products. The Sponsor shall be entitled to eighty percent (80%) of the net revenue from Future Contract Related Products, which amount may take into account any opportunity costs (including foregone merchant revenues) of providing the Future Contract Related Products. For greater certainty, (i) the foregoing shall apply irrespective of whether the Future Contract Related Products are Capacity Products; (ii) no revenue earned by the Supplier in respect of Future Contract Related Products shall be included in the calculation of Aggregate Merchant Revenue; and (iii) the net revenue from Future Contract Related Products shall not be less than zero.

ARTICLE 3
PHYSICAL OBLIGATIONS

3.1 Must-Offer Obligations

(a) To the extent not prohibited by the IESO Market Rules, the Supplier shall offer the Contract Capacity one hundred percent (100%) of the time during each Availability Window in the day-ahead energy and real-time energy IESO-Administered Markets unless (x) the Facility is on an Outage, including Planned Outage or Forced Outage, or (y) the Facility is scheduled with the System Operator to be on an Outage, or (z) the Facility is State-of-Charge limited as a result of having expended energy in an amount not less than 98% of the Storage Capacity in the applicable Availability Window and the ten (10) hour period immediately prior to the start of that Availability Window, provided that (A) the energy amount of any operating reserve(s) that is activated from the Facility as a reduction in load demand during the ten (10) hour period immediately prior to the start of that Availability Window, and (B) the amount of any energy required to be reserved during the Availability Window in order to permit the Supplier to meet its commitments in the day ahead energy market, shall each be deemed to be expended energy for purposes of the calculation of expended energy (the "**Must-Offer Obligations**"). For greater certainty:

(i) a failure to provide any such offers (including the rescission or reduction of an existing offer) outside of an Availability Window shall not constitute a failure to comply with the Must-Offer Obligations;

(ii) if the Facility is or is scheduled to be on a partial Outage or deration, the Must-Offer Obligations will not apply to the part of the Facility on or scheduled to be on the Outage or deration; and

(iii) notwithstanding Section 16.11, if the Supplier fails to comply with the Must-Offer Obligations, (A) the sole and exclusive remedies for the Sponsor in relation to such failure shall be the reduction of Availability

and/or Reliability, as applicable, pursuant to Exhibit C, and if applicable, the Sponsor's rights pursuant to Sections 10.1(m) and 10.2, and (B) the Sponsor irrevocably waives any Claims it may have with respect to such failure.

(b) The "**Availability Window**" means 8:00 AM to 10:00 PM (EST) on Business Days or such other continuous 14-hour period on Business Days prescribed by the Sponsor from time to time, provided that: (i) the Sponsor shall be entitled to exercise the right to prescribe a revised Availability Window on ninety (90) days' prior written notice up to two times in each Contract Year; and (ii) such revisions shall be limited to a maximum movement of two hours relative to the start and end times of the Availability Window as defined as at the Contract Date, and provided further that the Sponsor shall be entitled to exceed the two-hour maximum when exercising its right to prescribe a revised Availability Window if the Sponsor obtains the Supplier's prior written consent which shall not be unreasonably withheld, delayed or conditioned.

(c) The Reliability of the Contract Capacity will be calculated as set forth in Exhibit C. For any Settlement Month starting with the thirteenth (13^{th}) Settlement Month that Reliability in respect of the Contract Capacity is less than [redacted]%, the Monthly Payment will be reduced by the "**Reliability Reduction Factor**" or "**RRF**", calculated as set forth in Exhibit C.

ARTICLE 4
CALCULATION OF MONTHLY PAYMENT

4.1 Operation of Facility During the Term

From and after the beginning of the hour ending 01:00 (EST) of the Term Commencement Date, the Supplier agrees to operate the Facility in accordance with the terms of this Agreement, and the Monthly Payment and Regulatory Charge Credit shall begin to accrue and be payable in accordance with Section 4.2 and Article 5. For certainty, the Parties acknowledge that the Sponsor is not purchasing from the Supplier, nor is the Supplier selling to the Sponsor, any Electricity or Related Products, provided however, nothing in this sentence restricts the Supplier's right to sell Electricity and Related Products attributable to the Contract Capacity into the IESO-Administered Markets.

4.2 Payment Amounts

(a) The Monthly Payment shall be calculated pursuant to Exhibit J. If the Monthly Payment is a positive amount, it shall be payable from the Sponsor to the Supplier. If the Monthly Payment is a negative amount, the absolute value of the Monthly Payment shall be payable from the Supplier to the Sponsor.

(b) The Sponsor shall pay to the Supplier the Regulatory Charge Credit calculated in accordance with Exhibit E in respect of each Settlement Month during the Term.

4.3 Supplier's Responsibility for Taxes

The Supplier is liable for and shall pay, or cause to be paid, or reimburse the Sponsor if the Sponsor has paid, all Taxes applicable to any Monthly Payment or other amount due to the Sponsor. If any HST is payable in connection with a Monthly Payment or other amount due to the Sponsor, such HST shall be paid by the Supplier. In the event that the Sponsor is required to remit such Taxes, the amount thereof shall be deducted from any sums becoming due to the Supplier hereunder, or shall be added to any sums becoming due to the Sponsor hereunder.

4.4 Sponsor's Responsibility for Taxes

The Sponsor is liable for and shall pay, or cause to be paid, or reimburse the Supplier if the Supplier has paid, all Taxes applicable to any Monthly Payment or other amount due to the Supplier. If any HST is payable in connection with a Monthly Payment or other amount due to the Supplier, such HST shall be paid by the Sponsor. In the event that the Supplier is required to remit such Taxes, the amount thereof shall be deducted from any sums becoming due to the Sponsor hereunder, or shall be added to any sums becoming due to the Supplier hereunder.

4.5 Non-Residency

If the Supplier is or becomes a non-resident of Canada, as that term is defined in the ITA, the Supplier shall notify the Sponsor forthwith of such status and shall provide the Sponsor with information sufficient to permit the Sponsor to comply with any withholding Tax, or other Tax obligations, to which the Sponsor may be subject as a result thereof. If the Sponsor incurs any withholding or other similar Taxes as a result of such non-residency, then payments under this Agreement by the Sponsor shall be reduced by the amount of such withholding Taxes and the Sponsor shall remit such withholding Taxes to the applicable taxing authorities. The Sponsor shall within sixty (60) days after remitting such Taxes, notify the Supplier in writing, providing reasonable detail of such payment so that the Supplier may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If, after the Sponsor has paid such amounts, the Sponsor receives a refund, rebate or credit on account of such Taxes, then the Sponsor shall promptly remit such refund, rebate or credit amount to the Supplier.

4.6 Establishment of Net Revenue Requirement

(a) By no later than July 31, 2023, the Sponsor shall provide the Supplier with written notice of its calculation of the NRR Adjustment. Where the NRR Adjustment is greater than zero, such calculation shall be accompanied by a certificate executed by an officer of the Sponsor certifying the Marginal RFP Price. The Supplier shall, within ten (10) Business Days of receipt of the Sponsor's calculation either confirm the Sponsor's calculation by countersigning the notice, or reject the Sponsor's calculation. If the Supplier fails to respond within such period, the Supplier shall be deemed to have accepted the Sponsor's calculation. If the Supplier rejects the Sponsor's calculation, then the Parties shall promptly meet in an effort to reconcile their disagreement. If the Parties fail to reach Agreement within thirty (30) days' after the Supplier's rejection of the Sponsor's calculation, the matter shall be resolved by binding arbitration pursuant to Section 16.2 (without further need to continue informal dispute resolution pursuant to Section 16.1).

(b) The "**NRR Adjustment**" or "**NRRA**" shall be calculated as follows:

(i) if NRR_R is equal to or less than the Marginal RFP Price, then NRRA = 0.

(ii) if NRR_R is greater than the Marginal RFP Price, then

$$NRRA = \min [\$1{,}500, (NRR_R - \text{Marginal RFP Price})].$$

(iii) If for any reason no Marginal RFP Price exists as of June 30, 2023 (including due to a delay or cancellation of the Expedited RFP, or if no energy storage facilities are awarded contracts in the Expedited RFP), then NRRA = 0.

(c) For the purposes of the calculations set forth in Section 4.6(b), the "**Reference NRR**" or "**NRR_R**" is determined as follows:

If LCE_B is less than or equal to LCE_{th}: **NRR_R** = $LCE_B \times 0.0075 + 13{,}885$ *If LCE_m is greater than LCE_{th}:* **NRR_R** = $LCE_B \times 0.0076 + 13{,}885$	
where:	
NRR_R	is the Reference NRR (in CAD$/MW-month).
LCE_B	is the lithium carbonate market price (99.5% battery grade), reported (in RMB/MT) per the Shanghai Metals Market available online at https://www.metal.com/Chemical-Compound/201102250059, for the last day of the calendar month immediately prior to the last day that Expedited RFP Proposals may be submitted.
LCE_{th}	is the lithium carbonate threshold price and is equal to [redacted] RMB/MT lithium carbonate market price.

(d) By no later than January 31, 2024, the Sponsor shall provide the Supplier with written notice of its calculation of NRR_B. The Supplier shall, within ten (10) Business Days of receipt of the Sponsor's calculation either confirm the Sponsor's calculation by countersigning the notice, or reject the Sponsor's calculation. If the Supplier fails to respond within such period, the Supplier shall be deemed to have accepted the Sponsor's calculation. If the Supplier rejects the Sponsor's calculation, then the Parties shall promptly meet in an effort to reconcile their disagreement. If the Parties fail to reach Agreement within thirty (30) days' after the Supplier's rejection of the Sponsor's calculation, the matter shall be resolved by binding arbitration pursuant to Section 16.2 (without further need to continue informal dispute resolution pursuant to Section 16.1).

(e) NRR_B shall be calculated as follows:

If LCE_m is less than or equal to LCE_{th}: **NRR_B** = $LCE_m \times 0.0075 + 13{,}885 - NRRA$ *If LCE_m is greater than LCE_{th}:* **NRR_B** = $LCE_m \times 0.0076 + 13{,}885 - NRRA$	
where:	
NRR_B	is the Net Revenue Requirement for the purposes of Exhibit B (in CAD$/MW-month).
LCE_m	is the lithium carbonate market price (99.5% battery grade) (in RMB/MT), average of daily average prices over the Lithium Adjustment Period, per the Shanghai Metals Market available online at https://www.metal.com/Chemical-Compound/201102250059, but not less than [redacted] RMB/MT.
LCE_{th}	is the lithium carbonate threshold price as set forth in Section 4.6(c).
Lithium Adjustment Period	[redacted]
NRRA	is the Net Revenue Requirement Adjustment, determined in accordance with Section 4.6(b).

4.7 Windfall Sharing

(a) Following the end of each Contract Year: (x) the actual merchant revenue earned by the Facility, including from the IESO-Administered Markets, during the period commencing on the first day of the Term and ending on the last day of the most recently completed Contract Year (the "**Calculation Period**") shall be calculated by the Supplier (the "**Aggregate Merchant Revenue**"), provided that, and notwithstanding the foregoing, any revenue earned by Supplier in respect of Future Contract Related Products or the sale or monetization of Environmental Attributes shall not be included in the calculation of Aggregate Merchant Revenue; and (y) the merchant revenue target (the "**Merchant Revenue Target**") shall be calculated by the Supplier for each such Contract Year in the Calculation Period as [redacted] multiplied by IF_y for the applicable Contract Year. No later than ninety (90) days after the end of each Contract Year:

(i) the Supplier shall report to the Sponsor (A) the Aggregate Merchant Revenue as of the last day of the applicable Calculation Period, (B) the Merchant Revenue Target for each Contract Year during the Calculation Period, and (C) fifty percent (50%) of the amount, if any, by which the Aggregate Merchant Revenue exceeds the sum of the Merchant Revenue

Targets for all such Contract Years included in the Calculation Period (such fifty percent (50%) portion, the "**Windfall Amount**"); and

(ii) if such report indicates that the Windfall Amount exceeds the net present value (calculated using a discount rate of six percent (6%)) of all reasonably expected Monthly Payments remaining in the Term (such excess being the "**Windfall Security Amount**"), the Supplier shall, at its sole expense, as applicable: (A) provide to the Sponsor a Letter of Credit in the amount of the Windfall Security Amount (a "**Windfall LC**") or (B) update any Windfall LC previously provided to the Sponsor under this Section 4.7(a)(ii) so its value is equal to the Windfall Security Amount (failing which, the Sponsor shall be entitled to set off the Windfall Security Amount from future Monthly Payments until the Windfall LC has been provided). Subject to the rest of this Section 4.7, the terms of Section 6.3 shall apply to any Windfall LC.

(b) Pursuant to Section 4.7(a), no later than ninety (90) days after the end of the Term, the Supplier shall calculate the Aggregate Merchant Revenue for the entire Term and the Merchant Revenue Target for each Contract Year in the Term, and provide the report to the Sponsor specified in Section 4.7(a)(i) which shall include: (A) the Aggregate Merchant Revenue as of the last day of the Term, (B) the Merchant Revenue Target for each Contract Year during the Term, and (C) fifty percent (50%) of the amount, if any, by which the Aggregate Merchant Revenue exceeds the sum of the Merchant Revenue Targets for all such Contract Years (such fifty percent (50%) portion, the "**Final Windfall Amount**"). If a Final Windfall Amount exists, the Supplier shall promptly pay the Final Windfall Amount to the Sponsor, and, following such payment, the Sponsor shall promptly return all Windfall LC(s) held by the Sponsor. If the Supplier fails to pay the Final Windfall Amount to the Sponsor when due, the Sponsor shall be entitled to draw on the Windfall LC(s) held by the Sponsor. If no Final Windfall Amount exists, the Sponsor shall promptly return all Windfall LC(s) held by the Sponsor.

4.8 Additional Sources of Funding

(a) In the event the Supplier is awarded a grant or funding prior to the end of the Term (an "**Additional Source of Funding**") under any program being run by a Governmental Authority other than funding under the Department of Natural Resource Canada's Smart Renewables and Electrification Pathways Program pursuant to any agreement in effect as of the Contract Date, the Supplier shall make a payment to the Sponsor in proportion to the total value of the Additional Source of Funding that is Non-Refundable as follows:

(i) payments equal to eighty percent (80%) multiplied by the total amount of the Additional Source of Funding shall be made to the Sponsor no more than thirty (30) days after any such amount has been received by the Supplier and such amount has become Non-Refundable (which, for clarity, may be after the end of the Term); and

(ii) for clarity, no payment from the Supplier to the Sponsor shall be required in relation to the remaining twenty percent (20%),

provided, however, and notwithstanding the foregoing, the treatment of any such Additional Source of Funding under the Agreement shall in no event contravene the requirements of the relevant governmental program and in the case of any such possible contravention, the Supplier shall not participate in the grant or funding program without the Sponsor's prior written consent, to be given in its sole and absolute discretion. For greater certainty, the Parties acknowledge and agree that any credits or other benefits or payments received by the Supplier under the ITC Program shall not constitute an Additional Source of Funding pursuant to this Section 4.8.

ARTICLE 5
STATEMENTS AND PAYMENTS

5.1 Metering and Other Data

(a) The Supplier agrees to provide to the Sponsor access to the meters in the Metering Plan to accommodate remote interrogation of the metering data (including State-of-Charge data) on a daily basis, in addition to any obligations under the IESO Market Rules. The Supplier agrees to provide to the Sponsor, at all times, access to any other information relating to the Facility that the Supplier has provided to, or received from, the System Operator under the IESO Market Rules, from time to time. The Sponsor agrees to provide to the Supplier, upon the Supplier's request, any information that the Sponsor will be utilizing in preparing any Statement that is not available directly to the Supplier from the System Operator. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 5.1, such Party shall notify the other Party, and if applicable, the System Operator in accordance with the IESO Market Rules, on a timely basis.

(b) Notwithstanding the foregoing, the Parties acknowledge and agree that all Statements shall be prepared based on settlement data from the System Operator under the IESO Market Rules and in the event of a discrepancy between market settlement data from the System Operator and information received directly from the Supplier pursuant to Section 5.1(a), then the settlement data from the System Operator shall, subject to Section 5.7, be considered to be correct.

5.2 Statements

(a) The Sponsor shall prepare and deliver a settlement statement (the "**Statement**") to the Supplier, within twenty (20) Business Days after the end of each calendar month in the Term that is the subject of the Statement (the "**Settlement Month**"), setting out the basis for the Monthly Payment with respect to the Settlement Month, as well as the basis for any other payments owing under this Agreement by either Party to the other in the Settlement Month. A Statement may be delivered by the Sponsor to the Supplier by electronic means and shall include the reference number assigned to this Agreement by the Sponsor and a description of the components of the

Monthly Payment and other payments, as described in this Agreement, including Section 4.2, as applicable, owing to the Supplier for the Settlement Month.

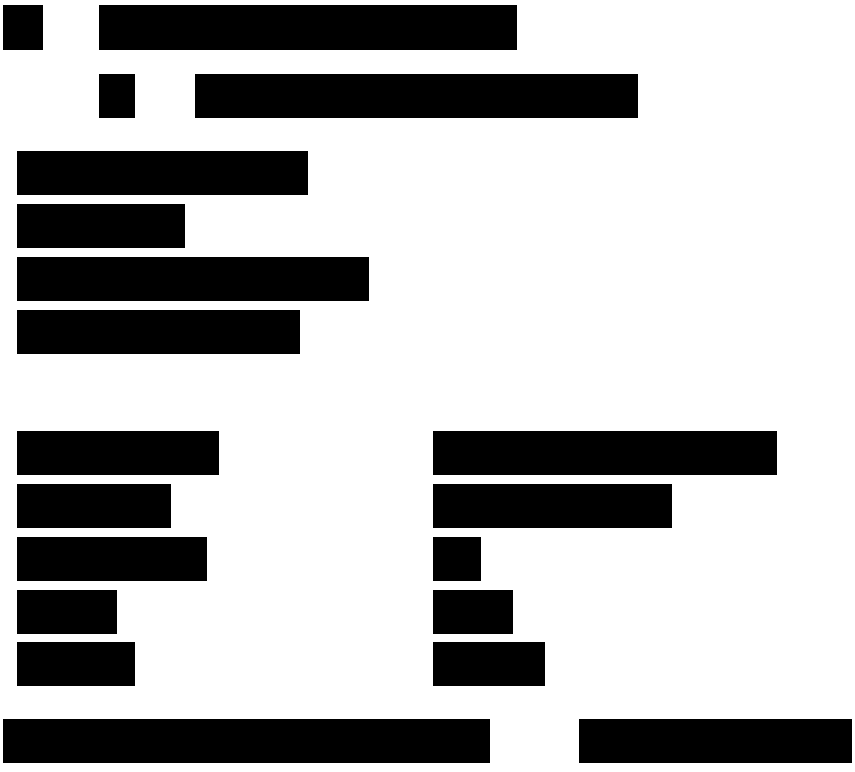
(b) The Sponsor's calculation of the Regulatory Charge Credit shall be included in the Statement for the Settlement Month to which the Regulatory Charge Credit relates, and shall be paid on the Payment Date corresponding to such Statement. The amount of the Regulatory Charge Credit that is due on a given Payment Date shall be added to (or subtracted from, as the case may be), the applicable Monthly Payment

5.3 Payment

The Party owing the other Party in respect of a Statement shall remit to the other Party full payment in respect of the Statement no later than the final Business Day of the month immediately after the end of the Settlement Month to which the Statement relates (the "**Payment Date**"). Any and all payments required to be made by either Party under any provision of this Agreement shall be made by electronic funds transfer (EFT) to the applicable account designated in Section 5.5, or as otherwise agreed by the Parties.

5.4 Interest

The Party owing the other Party in respect of a Statement shall pay interest on any late payment to the other Party, from the Payment Date to the date of payment, unless such late payment was through the fault of the other Party. The interest rate applicable to such late payment shall be the Interest Rate in effect on the date that the payment went into arrears, calculated daily, but shall not, under any circumstances, exceed the maximum interest rate permitted by Laws and Regulations.



[redacted]

5.6 Adjustment to Statement

(a) Each Statement shall be subject to adjustment for errors in arithmetic, computation, or other errors, raised by a Party during the period of one (1) year following the end of the calendar year in which such Statement was issued. If there are no complaints raised, or if any complaints raised in the time period have been resolved, such Statement shall be final and subject to no further adjustment after the expiration of such period.

(b) Notwithstanding the foregoing, the determination by the System Operator acting pursuant to the IESO Market Rules of any information shall be final and binding on the Parties in accordance with the IESO Market Rules, and without limiting the generality of the foregoing, if a Statement contains an error in the data or information issued by the System Operator which the System Operator has corrected pursuant to the IESO Market Rules then the one (1) year limit set forth in Section 5.6(a) shall not apply to the correction of such error or the Sponsor's ability to adjust, or the Supplier's ability to require the Sponsor to adjust, the Statement.

(c) Subject to Section 5.7, any adjustment to a Statement made pursuant to this Section 5.6 shall be made in the next subsequent Statement.

5.7 Disputed Statement

If the Supplier disputes a Statement or any portion thereof, the Party owing any amount set forth in the Statement shall, notwithstanding such dispute, pay the entire amount set forth in the Statement to the other Party. The Supplier shall provide written notice to the Sponsor setting out the portions of the Statement that are in dispute with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the Sponsor will promptly prepare a revised Statement. Any overpayment or underpayment of any amount due under a Statement shall bear interest at the Interest Rate, calculated daily, from and including the time of such overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised Statement shall be made on the tenth (10th) Business Day following the date on which the revised Statement is delivered to the Supplier. If a Statement dispute has not been resolved between the Parties within five (5) Business Days after receipt of written notice of such dispute by the Sponsor, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 16.1.

5.8 Statements and Payment Records

The Parties shall keep all books and records necessary to support the information contained in and with respect to each Statement and any payment due under this Agreement, in accordance with Section 15.2.

ARTICLE 6
CREDIT AND SECURITY REQUIREMENTS

6.1 Completion and Performance Security

(a) The Parties acknowledge that the Supplier has, concurrent with the execution of this Agreement, provided to the Sponsor security in the form described in Section 6.2(a) for the performance of the Supplier's obligations under this Agreement (the "**Completion and Performance Security**") in an amount equal to $5,000,000.

(b) From and after the Contract Date and until the end of the Term, the Supplier shall maintain the Completion and Performance Security in the amount and for the period specified below:

(i) from the Contract Date until the first date specified in Section 6.1(b)(ii), of $5,000,000 (which, for clarity, has been provided to the Sponsor as set out in Section 6.1(a));

(ii) if Financial Closing has not been achieved by the date that is ninety (90) days after the Contract Date, then from the date that is ninety (90) days after the Contract Date until the first date specified in Section 6.1(b)(iii), of $10,000,000;

(iii) from the date that is the earlier of (A) the date of Financial Closing, and (B) one hundred and eighty (180) days after the Contract Date, until COD, of $15,000,000; and

(iv) from COD until the end of the Term, of $5,000,000.

(c) In the event that the Sponsor, in accordance with this Agreement, has recovered monies that were due to it using all or part of the Completion and Performance Security, the Supplier shall forthwith provide replacement security to cover an amount equal to that recovered or paid out of the Completion and Performance Security. In exchange for the Completion and Performance Security in the amended amount, the Sponsor will return to the Supplier the original Completion and Performance Security.

6.2 Composition of Security

(a) Prior to the COD, the obligation of the Supplier to post and maintain Completion and Performance Security as required by Section 6.1(b)(i), 6.1(b)(ii) and 6.1(b)(iii) must be satisfied by the Supplier providing to the Sponsor a Letter of Credit for the full amount.

(b) From and after the date of receipt by the Supplier of the confirmation of the Sponsor described in Section 2.4(b) in respect of COD, the Completion and Performance Security shall be provided as set out in Section 6.2(b)(i) or 6.2(b)(ii) below:

(i) a Letter of Credit for the full amount of the Completion and Performance Security; or

(ii) subject to Sections 6.2(c) and 6.2(d), a Guarantee, up to a maximum amount determined pursuant to Section 6.4, but not to exceed ninety percent (90%) of the amount of the Completion and Performance Security, together with a Letter of Credit for the balance of the amount of the Completion and Performance Security.

To the extent that the amount of the Guarantee requirement increases or decreases from time to time in accordance with this Article 6, the amount of the Letter of Credit shall correspondingly be required to be decreased or increased, respectively, so that the total amount of the Completion and Performance Security held by the Sponsor at all times from and after the COD remains in an aggregate amount as required pursuant to Section 6.1(b)(iv).

(c) If the aggregate of the Supplier's Creditworthiness Value determined pursuant to Section 6.4(b) and the principal amount of the Letter of Credit described in Section 6.2(b)(ii) is equal to or greater than the amount of the Completion and Performance Security, then no Guarantee is required.

(d) If a Guarantee forms part of the Completion and Performance Security and:

(i) the Creditworthiness Value of the Supplier determined pursuant to Section 6.4(b) is equal to or greater than the Creditworthiness Value of the Guarantor determined pursuant to Section 6.4(b), provided the Guarantor has a Credit Rating required of a Guarantor as set out in Section 6.4, or

(ii) the aggregate of the Supplier's Creditworthiness Value and the principal amount of the Letter of Credit described in Section 6.2(b)(ii) is equal to or greater than the amount of the Completion and Performance Security,

then, provided the Supplier is not then in default under this Agreement, the Sponsor shall, upon request by the Supplier, return the Guarantee to the Supplier.

(e) For greater certainty, the Completion and Performance Security may not be pooled or combined with security under any other agreement with the Sponsor.

6.3 Letter of Credit Provisions

Any Letter of Credit delivered hereunder shall be subject to the following provisions:

(a) The Supplier shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (ii) if the financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or other equivalent form of security satisfactory to the Sponsor at least ten (10) Business Days prior to the expiration of the outstanding Letter of Credit, and (iii) if a financial institution issuing a Letter of Credit fails to honour the Sponsor's properly documented request to draw on an outstanding Letter of Credit (other than a failure to honour as a result of a request to draw that does not conform to the requirements of such Letter of Credit), provide for the benefit of the Sponsor (A) a substitute Letter of Credit that is issued by another financial institution, or (B) other security satisfactory to the Sponsor in an amount equal to such outstanding Letter of Credit, in either case within ten (10) Business Days after the Supplier receives notice of such refusal.

(b) A Letter of Credit shall provide that the Sponsor may draw upon the Letter of Credit in an amount (up to the face amount or part thereof remaining available to be drawn thereunder for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Supplier but that have not been paid to the Sponsor within the time allowed for such payments under this Agreement (including any related notice or grace period or both). A Letter of Credit shall provide that a drawing may be made on the Letter of Credit upon submission to the financial institution issuing the Letter of Credit of one or more certificates specifying the amounts due and owing to the Sponsor in accordance with the specific requirements of the Letter of Credit. The location where the drawing may be made must be Toronto, Ontario.

(c) If the Supplier shall fail to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), or establish one or more additional Letters of Credit or other equivalent form of security satisfactory to the Sponsor when required hereunder, then without limiting other remedies the Sponsor may have under this Agreement, the Sponsor (i) may draw on the undrawn portion of any outstanding Letter of Credit and retain for its own account, as liquidated damages and not as a penalty, the amount equal to one (1%) percent of the face value of such outstanding Letter of Credit and/or (ii) prior to the expiry of

such Letter of Credit, may draw on the entire, undrawn portion of any outstanding Letter of Credit, upon submission to the financial institution issuing such Letter of Credit of a certificate specifying the entire amount of the Letter of Credit is owing to the Sponsor in accordance with the specific requirements of the Letter of Credit. Any amount then due and owing to the Sponsor shall be received by the Sponsor as liquidated damages and not as a penalty. If the amounts then due and owing are less than the amount drawn under such Letter of Credit, then such excess amount shall be held as Completion and Performance Security. The Supplier shall remain liable for any amounts due and owing to the Sponsor and remaining unpaid after the application of the amounts so drawn by the Sponsor. If the Supplier subsequently delivers a Letter of Credit or other security or other collateral permitted pursuant hereto, in each case satisfactory to the Sponsor in its sole and absolute discretion as to form, substance and amount, then upon acceptance by the Sponsor thereof, the Sponsor shall remit to the Supplier all amounts held by the Sponsor as Completion and Performance Security pursuant to this Section 6.3(c).

(d) The costs and expenses of establishing, renewing, substituting, cancelling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Supplier.

(e) The Sponsor shall return a Letter of Credit held by the Sponsor to the Supplier, if the Supplier is substituting a Letter of Credit of a greater or lesser amount pursuant to Section 6.3(a), within five (5) Business Days from the Sponsor's receipt of such substituted Letter of Credit.

6.4 Guarantee Provisions

(a) The Sponsor shall accept a guarantee in the Prescribed Form (the "**Guarantee**") from a guarantor of the Supplier (with the applicable party providing the Guarantee being referred to as the "**Guarantor**"), provided however that the Guarantor shall have a Credit Rating as listed in any of the four rows contained in the table below. Notwithstanding the foregoing, in the event the Guarantor has a Negative Outlook, then its Credit Rating, for purposes of calculating the Creditworthiness Value of the Guarantor in Section 6.4(b), will be automatically demoted by one (1) row in the table in Section 6.4(b)(i). For greater certainty, a Guarantor with a Credit Rating in the fourth (4th) level set forth below without a Negative Outlook will no longer be able to provide a Guarantee if it subsequently receives a Negative Outlook. Subject to Section 6.2(a), the amount of the Guarantee shall be equal to or less than the Creditworthiness Value of the Guarantor, failing which the Supplier shall be required to provide alternative acceptable security as provided in Section 6.2 so as to remain in compliance with the Completion and Performance Security requirements set out in Section 6.1.

(b) (i) A Person's Creditworthiness Value (the "**Creditworthiness Value**") shall be determined by the following formula:

S x T

where S represents the Tangible Net Worth of the Person, expressed in Dollars, and T is a figure, used for weighting purposes, taken from the column entitled "Value of T" in the table below of the appropriate row corresponding to the Person's Credit Rating as adjusted by any Negative Outlook in accordance with Section 6.4(a) or Section 6.4(b)(ii), as applicable, provided that where the Person has Credit Ratings from more than one rating agency set out in the table below, then the lowest of such Credit Ratings, as adjusted by any Negative Outlook in accordance with Section 6.4(a) or Section 6.4(b)(ii), as applicable, shall be used:

	Credit Rating of Person			
	S & P	**DBRS**	**Moody's**	**Value of T**
1.	At least A-	At least A low	At least A3	0.10
2.	At least BBB+	At least BBB high	At least Baal	0.08
3.	At least BBB	At least BBB	At least Baa2	0.06
4.	At least BBB-	At least BBB low	At least Baa3	0.05

(ii) In the event that any Person has a Negative Outlook, then its Credit Rating will automatically be demoted by one (1) row in the table in Section 6.4(b)(i).

(c) Upon the consent of the Sponsor, which consent shall not be unreasonably withheld, the Guarantor may substitute its Guarantee with a guarantee from an Affiliate or from any other Person who would qualify as a guarantor for an amount equivalent to the amount of the Guarantee (the "**Replacement Guarantee**"). The Replacement Guarantee shall be in the form of the Guarantee. Upon delivery of the Replacement Guarantee, (i) such Replacement Guarantee shall be deemed to be the "**Guarantee**" and such Affiliate or other Person providing such guarantee, as the case may be, shall be deemed to be the "**Guarantor**" for all purposes of this Agreement and (ii) the Sponsor shall return the original Guarantee to the original Guarantor within five (5) Business Days of such delivery.

(d) For greater clarity, all provisions of this Agreement that refer to (i) the Guarantor or similar references, or (ii) the Creditworthiness Value of the Guarantor or similar references, shall:

(A) only apply in respect of the Guarantor if that Guarantor has, at the applicable time, issued a Guarantee in favour of the Sponsor and that Guarantee remains in effect at that time (otherwise, the reference to Guarantor shall be excluded when interpreting the provision until such time as a Guarantee is provided); and

(B) only refer to the Creditworthiness Value of the Supplier (and not the Creditworthiness Value of its Guarantor) when and for so long as its Guarantor has not provided a Guarantee that remains in effect at the applicable time.

6.5 Financial Statements

(a) If there is a Guarantor, the Supplier shall, on a quarterly basis, for the first three fiscal quarters in a year, provide to the Sponsor (i) as soon as available and in no event later than sixty (60) days after the end of each fiscal quarter of the Guarantor, unaudited consolidated financial statements of the Guarantor, for such fiscal quarter prepared in accordance with GAAP, (or IFRS, if the Guarantor has adopted such standard), and (ii) as soon as possible and in no event later than one hundred and twenty (120) days after the end of each fiscal year, audited consolidated financial statements of the Guarantor for such fiscal year prepared in accordance with GAAP or IFRS, as applicable.

(b) Notwithstanding the foregoing, if any such financial statements are not available in a timely manner due to a delay in preparation or auditing, such delay shall not be considered a breach of this Section 6.5 so long as the Guarantor is diligently pursuing the preparation, audit and delivery of such financial statements. Quarterly financial statements may be delivered electronically to the Sponsor in PDF form. Upon each delivery of the Guarantor's financial statements to the Sponsor, the Guarantor providing such financial statements shall be deemed to represent to the Sponsor that its financial statements were prepared in accordance with GAAP or IFRS, as applicable, and present fairly the financial position of the Guarantor for the relevant period then ended. In the event that the Guarantor does not publish financial statements on a quarterly basis, then unaudited consolidated financial statements shall be provided by the Guarantor, at a minimum, on a semi-annual basis. To the extent that the Supplier's Creditworthiness Value is such that the Guarantee is not required or it is returned to the Guarantor and cancelled pursuant to Section 6.2(d), then the obligations to provide financial statements under this Section 6.5 shall apply in full to the Supplier instead of the Guarantor.

6.6 Notice of Deterioration in Financial Indicators

The Supplier shall provide notice to the Sponsor of any material deterioration of any of the Financial Indicators of the Supplier or the Guarantor immediately upon the Supplier becoming aware of such deterioration.

ARTICLE 7
REPRESENTATIONS

7.1 Representations of the Supplier

The Supplier represents to the Sponsor as follows, and acknowledges that the Sponsor is relying on such representations in entering into this Agreement:

(a) The Supplier is a limited partnership formed under the laws of Ontario, is registered or otherwise qualified to carry on business in the Province of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.

(b) This Agreement has been duly authorized, executed, and delivered by the Supplier and is a valid and binding obligation of the Supplier enforceable in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.

(c) The execution and delivery of this Agreement by the Supplier and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Supplier under:

(i) any contract or obligation to which the Supplier is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;

(ii) the articles, by-laws or other constating documents, or resolutions of the directors or shareholders of the Supplier;

(iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;

(iv) any licence, permit, approval, consent or authorization held by the Supplier; or

(v) any Laws and Regulations,

that could have a Material Adverse Effect on the Supplier.

(d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.

(e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier that could have a Material Adverse Effect on the Supplier.

(f) All requirements for the Supplier to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.

(g) The Supplier is not a non-resident of Canada for the purposes of the ITA, unless it has notified the Sponsor of such non-resident status as per Section 4.5.

(h) The Supplier is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Supplier or on its obligations under this Agreement.

(i) The Supplier is not aware of any facts or circumstances that would reasonably be expected to prevent the achievement of Commercial Operation by the Milestone Date for Commercial Operation.

In addition, the Supplier shall, upon delivery of each of the quarterly progress reports required to be provided to the Sponsor pursuant to Section 2.5, represent in writing that each of the foregoing statements set out in Sections 7.1(a) to 7.1(h) inclusive continues to be true or, if any of such statements are no longer true, then the Supplier shall provide to the Sponsor a qualified representation with respect to such statement. Such qualified representation provided by the Supplier to the Sponsor shall be subject, however, to the rights of the Sponsor in Section 10.1(d) to require the Supplier to cure or remove any such qualification with respect to such statement.

7.2 Representations of the Sponsor

The Sponsor represents to the Supplier as follows, and acknowledges that the Supplier is relying on such representations in entering into this Agreement:

(a) The Sponsor is a corporation without share capital created under the laws of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.

(b) This Agreement has been duly authorized, executed, and delivered by the Sponsor and is a valid and binding obligation of the Sponsor enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted solely in the discretion of a court of competent jurisdiction.

(c) The execution and delivery of this Agreement by the Sponsor and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Sponsor under:

(i) any contract or obligation to which the Sponsor is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;

(ii) the by-laws or resolutions of the directors (or any committee thereof) or shareholder of the Sponsor;

(iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;

(iv) any licence, permit, approval, consent or authorization held by the Sponsor; or

(v) any Laws and Regulations,

that could have a Material Adverse Effect on the Sponsor.

(d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Sponsor or, to the knowledge of the Sponsor, threatened against the Sponsor.

(e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Sponsor, threatened against the Sponsor, that could have a Material Adverse Effect on the Sponsor.

(f) All requirements for the Sponsor to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.

(g) The Sponsor is in compliance with all Laws and Regulations other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Sponsor or on its obligations under this Agreement.

ARTICLE 8
CONFIDENTIALITY AND FIPPA

8.1 Confidential Information

From the Contract Date to and following the expiry of the Term, the Receiving Party shall keep confidential and secure and not disclose Confidential Information, except as follows:

(a) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 8 by any of its Representatives.

(b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any Laws and Regulations, order, regulation or ruling,

the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by law or regulation in accordance with Section 8.2.

(c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Facility, provided that any such Secured Lender or prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such Secured Lender or prospective lender or investor has completed and executed a confidentiality undertaking (the "**Confidentiality Undertaking**") in the Prescribed Form, covenanting in favour of the Sponsor to hold such Confidential Information confidential on terms substantially similar to this Article 8.

(d) Notwithstanding the foregoing, the Supplier consents to the disclosure of: (i) its name and contact particulars (including its address for service and the name of its Company Representative) by the Sponsor to all ESFA Suppliers for the purposes of Sections 1.7 and 1.8; (ii) on a confidential basis, any information received by the Sponsor in respect of this Agreement to the Sponsor's Representatives for such internal purposes as the Sponsor may reasonably determine from time to time; (iii) operational or performance data for research studies and analytics, provided that such data is disclosed on an anonymous or aggregated basis; (iv) any information the Sponsor or the System Operator is required to publish under the IESO Market Rules; (v) NRR_B; and (vi) this Agreement in its entirety with the following redacted: the definition of Lithium Adjustment Period; until Financial Closing has occurred and the Technology Vendor has consented to its disclosure, the name of the Technology Vendor; the percentage amount referenced in Section 3.1(c); the amount of the Merchant Revenue Target in Section 4.7(a); the value of LCE_{th}; the threshold price for LCE_m; the definition of the Lithium Adjustment Period in Section 4.6(e); Section 5.5; the percentage amounts set forth in Section 16.7(b); until the Permitted Acquisition has been publicly announced, the name of the permitted entity set forth in Section 16.7(d); and in Exhibit C paragraph 3, the percentage amounts, along with the corresponding factor in the immediately following paragraph.

(e) The Supplier hereby irrevocably authorizes and consents to the System Operator and any Transmitter releasing, disclosing, providing, delivering and otherwise making available to the Sponsor or its agents, and to the Sponsor releasing, disclosing, providing, delivering and otherwise making available to the System Operator and a Transmitter, a copy of this Agreement and any and all such information relating to connections, proposed connections, meters, metering data, testing data pertaining to Commercial Operation, billing data, Transmitter account or Metered Market Participant account (as applicable), of the Supplier or Facility as the Sponsor or its agents may determine is required in connection with the administration of this Agreement.

8.2 Notice Preceding Compelled Disclosure

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the Party compelling disclosure as is required by Laws and Regulations only to such Person or Persons to which the Receiving Party is legally compelled to disclose and, in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement. Where the recipient is not a Governmental Authority, the Receiving Party shall, if possible, obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

8.3 Return of Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Representatives' computers; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives, (ii) found in electronic format as part of the Receiving Party's off-site or on-site data storage/archival process system, or (iii) which is Mutually Confidential Information, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make at its own expense and retain one copy of any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Laws and Regulations, and shall keep such retained copy subject to the terms of this Article 8.

8.4 Injunctive and Other Relief

The Receiving Party acknowledges that breach of any provisions of this Article may cause irreparable harm to the Disclosing Party or to any third-party to whom the Disclosing Party owes a duty of confidence, and that the injury to the Disclosing Party or to any third-party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees that the Disclosing Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article 8.

8.5 FIPPA Records and Compliance

The Parties acknowledge and agree that the Independent Electricity System Operator is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the Independent Electricity System Operator ("**FIPPA Records**") and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The Supplier agrees to provide a

copy of any FIPPA Records that it previously provided to the Independent Electricity System Operator if the Supplier continues to possess such FIPPA Records in a deliverable form at the time of the Independent Electricity System Operator's request. If the Supplier does possess such FIPPA Records in a deliverable form, it shall provide the same within a reasonable time after being directed to do so by the Independent Electricity System Operator. The provisions of this Section 8.5 shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

ARTICLE 9
TERM

9.1 Term

(a) This Agreement shall be effective from the Contract Date to and until the end of the Term.

(b) The "**Term**" means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) of the date that is the Commercial Operation Date (the "**Term Commencement Date**"), and ending at 24:00 hours (EST) on the day before the twentieth (20^{th}) anniversary of the date that is the earlier of (A) the Milestone Date for Commercial Operation and (B) the Commercial Operation Date, subject to earlier termination in accordance with the provisions hereof. Subject to Sections 9.1(c) and 9.1(d), neither Party shall have any right to extend or renew the Term except as agreed in writing by the Parties.

(c) Where the Commercial Operation Date occurs after the Milestone Date for Commercial Operation, the Supplier shall have the option to, no later than sixty (60) days after the Commercial Operation Date, provide notice to the Sponsor along with a payment in the amount equal to the NRR_B divided by fifty (50), multiplied by the Contract Capacity for the final Contract Year and multiplied by the number of calendar days that the Commercial Operation Date followed the Milestone Date for Commercial Operation. Where the Supplier exercises such option, the Term shall be extended such that the Term will expire at 24:00 hours (EST) on the day before the twentieth (20^{th}) anniversary of the Commercial Operation Date.

(d) Where the Commercial Operation Date occurs after the Milestone Date for Commercial Operation and the Supplier does not exercise the option set out in Section 9.1(c), the Sponsor shall have the right, by providing notice to the Supplier no later than 180 days prior to the expiration of the Term, to extend the Term such that the Term will expire at 24:00 hours (EST) on the day before the twentieth (20^{th}) anniversary of the Commercial Operation Date.

ARTICLE 10
TERMINATION AND DEFAULT

10.1 Events of Default by the Supplier

Each of the following will constitute an Event of Default by the Supplier (each, a "**Supplier Event of Default**"):

(a) The Supplier or the Guarantor fails to make any payment when due or deliver and/or maintain the Completion and Performance Security as required under this Agreement, if such failure is not remedied within ten (10) Business Days after written notice of such failure from the Sponsor.

(b) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Sponsor, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such failure and such failure is capable of being cured during such extended cure period.

(c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier and is not remedied within thirty (30) Business Days after receipt by the Supplier of written notice of such failure or cessation from the Sponsor, provided that such cure period shall be extended by a further thirty (30) Business Days if the Supplier is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.

(d) Any representation made by the Supplier in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Supplier of written notice of such fact from the Sponsor, provided that such cure period (i) shall be extended for a further period of thirty (30) Business Days and (ii) may be extended by such further period of time as the Sponsor in its sole and absolute discretion determines is reasonable, if, in each case, the Supplier is diligently correcting such breach and such breach is capable of being corrected during such extended cure period. For certainty, notwithstanding the receipt by the Sponsor of a qualified representation by the Supplier with respect to any statement referred to in Sections 7.1(a) to 7.1(h) inclusive, the Sponsor may, in its sole and absolute discretion, require the Supplier, within the time limits set out in this Section 10.1(d), to cure or remove any such qualification to such statement.

(e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Supplier, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Supplier under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's obligations under this Agreement.

(f) The Supplier amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier under this Agreement to the resulting, surviving or transferee

Person and such Person has assumed all of the Supplier's obligations under this Agreement.

(g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Supplier or of any of the Supplier's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of a Governmental Authority, the Supplier is adjudicated bankrupt or insolvent or any substantial part of the Supplier's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Supplier seeking to have the Supplier declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.

(h) The Supplier makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Insolvency Legislation.

(i) The Supplier has defaulted under one or more obligations for indebtedness to other Persons, resulting in obligations for indebtedness in an aggregate amount of more than the greater of: (1) five percent (5%) of its Tangible Net Worth and (2) $50,000/MW multiplied by the Contract Capacity becoming immediately due and payable, unless: (A) such default is remedied within fifteen (15) Business Days after written notice of such failure from the Sponsor, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such default and such default is capable of being cured during such extended cure period; or (B) the Supplier has satisfied the Sponsor that such default does not have a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement.

(j) The Supplier has made a Facility Amendment that has not first been consented to by the Sponsor and that has not been removed within ten (10) Business Days after such Facility Amendment occurred.

(k) The COD has not occurred on or before the Longstop Date.

(l) Any of the events of default described in Sections 15.6(e)(ii), 15.6(g)(first paragraph) or 15.6(g)(i) has occurred.

(m) The Availability is less than 80.0% in respect of any Settlement Month starting with the thirteenth (13^{th}) Settlement Month.

(n) The Supplier undergoes a change in Control without first obtaining the written approval of the Sponsor if required pursuant to Sections 16.6 or 16.7.

(o) The Supplier assigns this Agreement without first obtaining the consent of the Sponsor, if required pursuant to this Agreement.

10.2 Remedies of the Sponsor

(a) If any Supplier Event of Default (other than a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g), and 10.1(h)) occurs and is continuing, upon written notice to the Supplier, the Sponsor may, subject to Article 12, terminate this Agreement.

(b) If a Supplier Event of Default referred to in Sections 10.1(b), 10.1(l), or 10.1(m), occurs and is continuing, in addition to the remedies set out in Section 10.2(a), at the discretion of the Sponsor, either:

(i) the Supplier will forfeit an amount equivalent to NRR_m times one month, multiplied by the Contract Capacity, as liquidated damages and not as a penalty; or

(ii) the Sponsor may levy a performance assessment set-off, as liquidated damages and not as a penalty, equal to three (3) times the NRR_m, multiplied by the Contract Capacity, in the event that three (3) or more Supplier Events of Default referred to in Sections 10.1(b), 10.1(l), or 10.1(m), have occurred within a Contract Year, regardless of whether such Supplier Events of Default have been subsequently cured,

and which may be satisfied by the Sponsor setting off any payments due to the Supplier against any amounts payable by the Supplier to the Sponsor including, at the Sponsor's option, the amount of any Completion and Performance Security provided to the Sponsor pursuant to Article 6, and by drawing on the Completion and Performance Security, or any part thereof, and if the remedy in Section 10.2(a) has not been exercised, requiring the Supplier to replace such drawn security with new security.

(c) If a Supplier Event of Default occurs and is continuing, the Sponsor may, in addition to the remedies set out in Section 10.2(a):

(i) set off any payments due to the Supplier against any amounts payable by the Supplier to the Sponsor including, at the Sponsor's option, the amount of any Completion and Performance Security provided to the Sponsor pursuant to Article 6; and

(ii) draw on the Completion and Performance Security, or any part thereof and, if the remedy in Section 10.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.

(d) Notwithstanding Sections 10.2(a), 10.2(b) and 10.2(c), upon the occurrence of a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g), and 10.1(h), this Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, any Secured Lender that has entered into an agreement with the Sponsor as contemplated by Sections 12.1(d) and 12.3 shall have the rights available to it under Section 12.2(g).

(e) Notwithstanding Sections 10.2(a), 10.2(b) and 10.2(c), upon the occurrence of the Supplier Event of Default referred to in Section 10.1(k), this Agreement shall automatically terminate without notice, act or formality, effective immediately upon the occurrence of such Supplier Event of Default.

(f) If the Sponsor terminates this Agreement pursuant to Section 10.2(a) or this Agreement is terminated pursuant to Sections 10.2(d) or 10.2(e), the Sponsor shall have the following option, exercisable in the sole and absolute discretion of the Sponsor:

(i) if the Termination Date precedes the COD, the Supplier shall pay, as liquidated damages and not as a penalty, an amount equivalent to (1) the amount of all Completion and Performance Security provided by or on behalf of the Supplier, plus (2) the amount of any portion of the Completion and Performance Security that the Supplier was required under Section 6.1 to provide to the Sponsor as of the Termination Date (with the total amount of such liquidated damages being referred to as the "**LD Sum**"). The Sponsor shall be entitled to retain all Completion and Performance Security provided by or on behalf of the Supplier and apply it towards the Supplier's obligation to pay the LD Sum. With respect to any unpaid portion of the LD Sum, the Sponsor may exercise all remedies available to the Sponsor including pursuing a claim for damages, as contemplated in Section 10.5; or

(ii) if the Termination Date is on or after the COD, the Sponsor shall be entitled to retain all Completion and Performance Security provided by or on behalf of the Supplier and exercise all other remedies available to the Sponsor including pursuing a claim for damages, as contemplated in Section 10.5.

(g) Termination shall not relieve the Supplier or the Sponsor of their respective responsibilities relating to the availability of the Contract Capacity and Storage Capacity and delivery of the Electricity, Related Products, and Environmental Attributes from the Facility that relate to the Contract Capacity and the Storage Capacity, or amounts payable under this Agreement, up to and including the Termination Date. The Sponsor shall be responsible only for the payment of amounts accruing under this Agreement up to and including the Termination Date. In addition to its other rights of set off available to it pursuant to this Agreement and at law, the Sponsor may hold back payment or set off its obligation to make such payment against any payments owed to it if the Supplier fails to comply with its obligations on termination.

10.3 Events of Default by the Sponsor

Each of the following will constitute an Event of Default by the Sponsor (each, a "**Sponsor Event of Default**"):

(a) The Sponsor fails to make any payment under this Agreement when due, if such failure is not remedied within ten (10) Business Days after written notice of such failure from the Supplier.

(b) The Sponsor fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Sponsor Event of Default), if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Supplier, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Sponsor is diligently remedying such failure and such failure is capable of being cured during such extended cure period.

(c) The Sponsor fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Sponsor and is not remedied within thirty (30) Business Days after receipt by the Sponsor of written notice of such failure or cessation from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Sponsor is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.

(d) Any representation made by the Sponsor in this Agreement is not materially true or correct in any material respect when made and is not made materially true or correct within thirty (30) Business Days after receipt by the Sponsor of written notice of such fact from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Sponsor is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.

(e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering the dissolution, termination of existence, liquidation or winding up of the Sponsor unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Sponsor under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Sponsor's obligations under this Agreement.

(f) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Sponsor or of any of the Sponsor's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of Governmental Authority, the Sponsor is adjudicated bankrupt or insolvent or any substantial part

of the Sponsor's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Sponsor seeking to have it declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.

(g) The Sponsor makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator, of it or of all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation.

(h) The Sponsor assigns this Agreement (other than an assignment made pursuant to Sections 16.5(d) or 16.5(e)) without first obtaining the consent of the Supplier, if required pursuant to this Agreement.

10.4 Termination by the Supplier

(a) If any Sponsor Event of Default occurs and is continuing, then upon written notice to the Sponsor, the Supplier may: (i) subject to Sections 16.5(d)(iii) and 16.5(e)(iii), terminate this Agreement, and (ii) set off any payments due to the Sponsor against any amounts payable by the Sponsor to the Supplier.

(b) Notwithstanding the foregoing, if applicable, the Sponsor shall be responsible for payment of amounts accruing under this Agreement only up to and including the Termination Date. The Supplier may hold back payment or set off against any payments owed by it if the Sponsor fails to comply with its obligations on termination.

10.5 Remedies for Termination Non-Exclusive

The termination of this Agreement by either Party and the payment of all amounts then due and owing to the other Party as expressly provided in this Agreement shall not limit, waive or extinguish in any way the recourse of either Party to any remedies available to it in relation to such termination at law, in equity or otherwise, nor shall such termination affect any rights that the Indemnitees may have pursuant to any indemnity given under this Agreement. Notwithstanding the foregoing, if the Sponsor has exercised the option set out in Section 10.2(f)(i), then the Sponsor's remedies against the Supplier in respect of the termination of this Agreement shall be limited to any unpaid portion of the LD Sum set out in Section 10.2(f)(i).

ARTICLE 11
FORCE MAJEURE

11.1 Effect of Invoking Force Majeure

(a) If, by reason of Force Majeure:

(i) the Supplier is unable to make available all or any portion of the Contract Capacity or is unable to Deliver or Withdraw Electricity, as applicable; or

(ii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder, including the Supplier being unable to achieve Commercial Operation by the Milestone Date for Commercial Operation or the Longstop Date;

then the Party so affected by Force Majeure shall be excused and relieved from performing or complying with such obligations (other than payment obligations) and shall not be liable for any liabilities, damages, losses, payments, costs, expenses (or Indemnifiable Losses, in the case of the Supplier affected by Force Majeure) to, or incurred by, the other Party in respect of or relating to such Force Majeure and such Party's failure to so perform or comply during the continuance and to the extent of the inability so caused from and after the invocation of Force Majeure.

(b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt written notice of the effect of the Force Majeure and reasonably full particulars of the cause thereof, in the Prescribed Form, provided that such notice shall be given as follows:

(i) within twenty (20) Business Days of the date that the Party invoking Force Majeure knew or ought to have known that the event of circumstances constituting Force Majeure could have a Material Adverse Effect on the critical path of the project schedule for the development and construction of the Facility where the event or circumstances constituting Force Majeure occur prior to COD; or

(ii) within ten (10) Business Days of the commencement of the event or circumstances constituting Force Majeure where the event or circumstances constituting Force Majeure occur on or after COD. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such ten (10) Business Day period, the Party invoking Force Majeure shall be allowed a further ten (10) Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars, in the Prescribed Form, to the other Party.

Where a Party providing notice of an event of Force Majeure fails to provide notice of the commencement of such event in accordance with the foregoing, such Party shall be deemed to have invoked Force Majeure with effect from the date when that Party gives to the other Party written notice in the Prescribed Form, of the event or circumstance constituting Force Majeure. For greater certainty, the reporting or discussion of a Force Majeure event provided in a periodic report from the Supplier to the Sponsor pursuant to Section 2.5 shall not constitute sufficient notice of the occurrence of a Force Majeure event.

(c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch,

the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved.

(d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within twenty (20) Business Days of the termination of the event or circumstances constituting Force Majeure.

(e) Nothing in this Section 11.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.

(f) Prior to COD, Force Majeure shall apply on the basis of whole calendar days only.

(g) If an event of Force Majeure causes the Supplier to not achieve Commercial Operation by the Milestone Date for Commercial Operation, then the Milestone Date for Commercial Operation shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. If an event of Force Majeure causes the Supplier to not achieve Commercial Operation by the Longstop Date, then the Longstop Date shall be extended for such reasonable period of delay directly resulting from such Force Majeure event. After the Term Commencement Date, an event of Force Majeure shall not extend the Term.

(h) If, prior to COD, the aggregate duration of all events of Force Majeure exceeds twenty-four (24) months, or any single event of Force Majeure has a duration of greater than eighteen (18) months, then notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement upon notice to the other Party and without any costs or payments of any kind to either Party, and all security shall be returned forthwith.

(i) If, on or following COD, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder for more than an aggregate of thirty-six (36) months in any sixty (60) month period during the Term, then either Party may terminate this Agreement upon notice to the other Party without any costs or payments of any kind to either Party, except for any amounts that were due or payable by a Party hereunder up to the date of termination, and all security shall be returned forthwith.

11.2 Exclusions

A Party shall not be entitled to invoke Force Majeure under this Article 11, nor shall it be relieved of its obligations hereunder in any of the following circumstances:

(a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence;

(b) if and to the extent the Party seeking to invoke Force Majeure has failed to use Commercially Reasonable Efforts to prevent or remedy the event of Force Majeure

and remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances, the settlement of which shall be wholly within the discretion of the Party involved);

(c) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach by such Party of Laws and Regulations;

(d) if the Force Majeure was caused by a lack of funds or other financial cause;

(e) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 11.1(b) or 11.1(d); or

(f) in respect of any impacts of the COVID-19 pandemic that were known or ought reasonably to be known by the Supplier as of the Contract Date.

For greater certainty, actions of the Sponsor that are not actions of the System Operator shall not constitute Force Majeure.

11.3 Definition of Force Majeure

For the purposes of this Agreement, the term "**Force Majeure**" means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, and that is beyond the affected Party's reasonable control, and shall include:

(a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;

(b) fires or explosions;

(c) local, regional or national states of emergency;

(d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of such Party or a third party invoking Force Majeure, unless such strikes or labour disputes are the result or part of a general industry strike or labour dispute);

(e) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;

(f) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;

(g) after the Term Commencement Date only, any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, Impact Assessment, licence or approval of any Governmental Authority or Transmitter required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, Impact Assessment, licence

or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure;

(h) any unanticipated maintenance or outage affecting the Facility which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure referred to in this Section 11.3, or which results from a failure of equipment that prevents the Facility from being able to Withdraw or Deliver Electricity, provided that:

(A) the Supplier provides timely updates to the Sponsor of the commencement date of the maintenance or outage and, where possible, provides seven (7) days advance notice of such date;

(B) the unanticipated maintenance or outage is commenced within one hundred twenty (120) days of the commencement of the occurrence of the relevant event of Force Majeure; and

(C) the Supplier schedules the unanticipated maintenance or outage in accordance with Good Engineering and Operating Practices.

For greater certainty, nothing in Section 11.3(h) shall be construed as limiting the duration of an event of Force Majeure. Each Party shall resume its obligations as soon as the event of Force Majeure has been overcome.

ARTICLE 12
LENDER'S RIGHTS

12.1 Lender Security

Notwithstanding Sections 16.5, 16.6(a) and 16.7, the Supplier, from time to time on or after the Contract Date, shall have the right, at its cost, to enter into a Secured Lender's Security Agreement. For the avoidance of doubt, in the case of a deed of trust or similar instrument securing bonds or debentures where the trustee holds security on behalf of, or for the benefit of, other lenders, only the trustee shall be entitled to exercise the rights and remedies under the Secured Lender's Security Agreement as the Secured Lender on behalf of the lenders. A Secured Lender's Security Agreement shall be based upon and subject to the following conditions:

(a) A Secured Lender's Security Agreement may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement.

(b) A Secured Lender's Security Agreement may not secure any indebtedness, liability or obligation that is not related to the Facility or cover any real or personal property not related to the Supplier's Interest.

(c) No Secured Lender's Security Agreement shall affect or encumber in any manner the Sponsor's title to any government-owned premises. The Sponsor shall have no liability whatsoever for payment of the principal sum secured by any Secured

Lender's Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the Sponsor for any or all of the same.

(d) No Secured Lender's Security Agreement shall be binding upon the Sponsor in the enforcement of the Sponsor's rights and remedies provided in this Agreement or by Laws and Regulations, unless and until the Sponsor and the Supplier enter into an agreement with a Secured Lender substantially in the form of Exhibit D for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement. For greater certainty, a Secured Lender will have no rights under this Agreement unless and until it enters into an agreement in substantially the form of Exhibit D with the Sponsor and the Supplier for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement as contemplated by Section 12.3. In the event of any assignment of a Secured Lender's Security Agreement, such assignment shall not be binding upon the Sponsor unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the Sponsor by the Supplier or the Secured Lender.

(e) If the Supplier is in default under or pursuant to the Secured Lender's Security Agreement and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give notice of such default to the Sponsor at least five (5) Business Days prior to exercising any such rights.

(f) Any Secured Lender's Security Agreement permitted hereunder may secure two (2) or more separate debts, liabilities or obligations in favour of two (2) or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 12.

(g) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 12.

(h) All rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Secured Lender's Security Agreement is outstanding, the Sponsor and the Supplier shall not amend or supplement this Agreement or agree to a termination of this Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld, conditioned, or delayed. A Secured Lender must respond within a reasonable period of time to any request to amend or supplement this Agreement.

(i) Despite any enforcement of any Secured Lender's Security Agreement, the Supplier shall remain liable to the Sponsor for the payment of all sums owing to the Sponsor under this Agreement and for the performance of all of the Supplier's obligations under this Agreement.

12.2 Rights and Obligations of Secured Lenders

While any Secured Lender's Security Agreement remains outstanding and the Sponsor has entered in an agreement contemplated by Section 12.3, the following provisions shall apply:

(a) No Supplier Event of Default (other than those set out in Sections 10.2(d) and 10.2(e)) shall be grounds for the termination by the Sponsor of this Agreement until:

(i) any notice required to be given under Section 10.1 and 10.2(a) has been given to the Supplier and to the Secured Lender; and

(ii) the cure period set out in Section 12.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.

(b) In the event the Sponsor has given any notice required to be given under Section 10.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the Sponsor shall accept such performance by such Secured Lender as if the same had been performed by the Supplier.

(c) Any payment to be made or action to be taken by a Secured Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.

(d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided in Section 12.2. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the Facility and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the Supplier's Interest with the consent of the Sponsor as required under Section 12.2(f).

(e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's Interest by reference to the Secured Lender's Security Agreement, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the Supplier's rights and benefits contained in this Agreement, except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is

the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is at Arm's Length with the Secured Lender, the Secured Lender shall cease to be liable for any of the Supplier's obligations and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.

(f) Despite anything else contained in this Agreement, any Person to whom the Supplier's Interest is transferred shall take the Supplier's Interest subject to the Supplier's obligations. No transfer shall be effective unless the Sponsor:

(i) acting reasonably, if such transferee is at Arm's Length with the Secured Lender; or

(ii) acting in its sole and subjective discretion, if such transferee is not at Arm's Length with the Secured Lender,

has approved of the transferee and the transferee has entered into an agreement with the Sponsor in form and substance satisfactory to the Sponsor, acting reasonably, wherein the transferee agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest, whether arising before or after the transfer, and including the posting of the Completion and Performance Security required under Article 6.

(g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the Sponsor shall, within ten (10) days after the date of such termination, deliver to each Secured Lender which is at Arm's Length with the Supplier a statement of all sums then known to the Sponsor that would at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the Sponsor is willing to enter into a New Agreement (the "**Sponsor Statement"**). Subject to the provisions of this Article 12, each such Secured Lender or its transferee approved by the Sponsor pursuant to Section 12.2(f) hereof shall thereupon have the option to obtain from the Sponsor a New Agreement in accordance with the following terms:

(i) Upon receipt of the written request of the Secured Lender within thirty (30) days after the date on which it received the Sponsor Statement, the Sponsor shall enter into a New Agreement.

(ii) Such New Agreement shall be effective as of the Termination Date and shall be for the remainder of the Term at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. The Sponsor's obligation to enter into a New Agreement is conditional upon the Secured Lender (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination, (B) otherwise fully curing any defaults under this Agreement existing

immediately prior to termination of this Agreement that are capable of being cured, and (C) paying all reasonable costs and expenses, including legal fees, so as to provide a full indemnity (and not only substantial indemnity), incurred by the Sponsor in connection with such default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender or its transferee approved by the Sponsor pursuant to Section 12.2(f) hereof, as the case may be, shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

When the Secured Lender has appointed an agent, a receiver or a receiver and manager or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Secured Lender's security, that Person may exercise any of the Secured Lender's rights under this Section 12.2(g).

(h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 12 shall enure only to the benefit of the holders of a Secured Lender's Security Agreement. If the holders of more than one such Secured Lender's Security Agreement who are at Arm's Length with the Supplier make written requests to the Sponsor in accordance with this Section 12.2 to obtain a New Agreement, the Sponsor shall accept the request of the holder whose Secured Lender's Security Agreement had priority immediately prior to the termination of this Agreement over the Secured Lender's Security Agreements of the other Secured Lenders making such requests and thereupon the written request of each other Secured Lender shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Secured Lender's Security Agreement, the Sponsor may rely upon the opinion as to such priorities of any law firm qualified to practise law in the Province of Ontario retained by the Sponsor in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

12.3 Cooperation

The Sponsor and the Supplier shall enter into an agreement in substantially the form attached as Exhibit D with any Secured Lender for the purpose of implementing the Secured Lender's Security Agreement protection provisions contained in this Agreement. The Sponsor, acting reasonably, shall consider any request jointly made by the Supplier and a Secured Lender or proposed Secured Lender to facilitate a provision of a Secured Lender's Security Agreement or proposed Secured Lender's Security Agreement that may require an amendment to this Agreement, provided that the rights of the Sponsor are not adversely affected thereby, the obligations of the Supplier to the Sponsor are not altered thereby and the consent of any other Secured Lender to such amendment has been obtained by the Supplier or the Secured Lender making the request for the amendment.

ARTICLE 13
DISCRIMINATORY ACTION

13.1 Discriminatory Action

A "**Discriminatory Action**" shall occur if:

(a) (i) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a bill in the Legislative Assembly of Ontario or the Government of Ontario causes to come into force or makes any order-in-council or regulation first having legal effect on or after the Contract Date; or

(ii) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier;

(b) the effect of the action referred to in Section 13.1(a):

(i) is borne principally by the Supplier; or

(ii) is borne principally by the Supplier, one or more ESFA Suppliers and/or one or more other suppliers who have entered into an energy storage facility agreement with the Sponsor; and

(c) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement to perform the Must-Offer Obligations, except where such action is in response to any act or omission on the part of the Supplier that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement. Despite the preceding sentence, none of the following shall be a Discriminatory Action:

(i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;

(ii) any such statute that prior to five (5) Business Days prior to the Contract Date:

(A) has been introduced as a bill in the Legislative Assembly of Ontario in a similar form as such statute takes when it has legal effect, provided that any amendments made to such bill in becoming such statute do not have a Material Adverse Effect on the Supplier; or

(B) has been made public in a discussion or consultation paper, press release or announcement issued by the System Operator, the Government of Ontario, and/or the Ministry of Energy that appeared on the Sponsor's Website or the website of the Government of Ontario and/or the Ministry of Energy, provided that any amendments made to such public form, in becoming such statute, do not have a Material Adverse Effect on the Supplier; and

(iii) any of such regulations that prior to five (5) Business Days prior to the Contract Date:

(A) have been published in the Ontario Gazette but by the terms of such regulations come into force on or after five (5) Business Days prior to the Contract Date, or

(B) have been referred to in a press release issued by the System Operator, the Government of Ontario and/or the Ministry of Energy that appeared on the Sponsor's Website or the website of the Government of Ontario or the Ministry of Energy, provided that any amendments made to such regulations in coming into force do not have a Material Adverse Effect on the Supplier.

Notwithstanding the foregoing, (I) Laws and Regulations regulating the development, licensing, permitting and operation of energy storage facilities generally constitute Laws and Regulations of general application for the purposes of Section 13.1(c)(i); and (II) changes to Global Adjustment (including changes to O. Reg. 429/04 – *Adjustments Under Section 25.33 of the Act*) do not constitute a Discriminatory Action and are addressed exclusively in Exhibit E. Notwithstanding the foregoing, if the Sponsor provides or is required to provide Discriminatory Action compensation or relief to any ESFA Suppliers, the Sponsor shall promptly provide the Supplier with written notice thereof and clause (I) of this paragraph shall not apply. If the Sponsor is unable to provide the foregoing notice due to confidentiality obligations to third parties, the Sponsor shall use commercially reasonable efforts to secure a waiver of such obligations, failing which the Sponsor shall take such action as is required so that the Supplier is not prejudiced under the Agreement by the Sponsor's inability to so disclose.

13.2 Consequences of Discriminatory Action

If a Discriminatory Action occurs, the Supplier shall have the right to obtain, without duplication, compensation (the "**Discriminatory Action Compensation**") from the Sponsor for the amount of the increase in the costs that the Supplier would reasonably be expected to incur to satisfy the Must-Offer Obligations as a result of the occurrence of such Discriminatory Action, commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, but excluding the portion of any costs charged by a Person who does not deal at Arm's Length with the Supplier that is in excess of the costs that would have been charged had such Person been at Arm's Length with the Supplier.

13.3 Notice of Discriminatory Action

(a) In order to exercise its rights in the event of the occurrence of a Discriminatory Action, the Supplier must give a notice (the "**Preliminary Notice**") to the Sponsor within sixty (60) days after the date on which the Supplier first became aware (or should have been aware, using reasonable due diligence) of the Discriminatory Action stating that a Discriminatory Action has occurred. Within sixty (60) days after the date of receipt of the Preliminary Notice, the Supplier must give another notice (the "**Notice of Discriminatory Action**"). A Notice of Discriminatory Action must include:

(i) a statement of the Discriminatory Action that has occurred;

(ii) details of the effect of the said occurrence that is borne by the Supplier;

(iii) details of the manner in which the Discriminatory Action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in satisfying the Must-Offer Obligations; and

(iv) the amount claimed as Discriminatory Action Compensation and details of the computation thereof.

The Sponsor shall, after receipt of a Notice of Discriminatory Action, be entitled, by notice given within thirty (30) days after the date of receipt of the Notice of Discriminatory Action, to require the Supplier to provide such further supporting particulars as the Sponsor considers necessary, acting reasonably.

(b) If the Sponsor wishes to dispute the occurrence of a Discriminatory Action, the Sponsor shall give a notice of dispute (the "**Notice of Dispute**") to the Supplier, stating the grounds for such dispute, within thirty (30) days after the date of receipt of the Notice of Discriminatory Action or within thirty (30) days after the date of receipt of the further supporting particulars, as applicable.

(c) If neither the Notice of Discriminatory Action nor the Notice of Dispute has been withdrawn within thirty (30) days after the date of receipt of the Notice of Dispute by the Supplier, the dispute of the occurrence of a Discriminatory Action shall be submitted to mandatory and binding arbitration in accordance with Section 16.2 without first having to comply with Section 16.1.

(d) If the Sponsor does not dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation claimed in the Notice of Discriminatory Action, the Sponsor shall pay to the Supplier the amount of Discriminatory Action Compensation claimed within sixty (60) days after the date of receipt of the Notice of Discriminatory Action. If a Notice of Dispute has been given, the Sponsor shall pay to the Supplier the Discriminatory Action Compensation Amount determined in accordance with Section 13.3(e) not later than sixty (60) days after the later of the date on which the dispute with respect to the occurrence of a Discriminatory Action is resolved and the date on which the Discriminatory Action Compensation Amount is determined.

(e) (i) If the Sponsor wishes to dispute the amount of the Discriminatory Action Compensation, the Sponsor shall give to the Supplier a notice (the "**Discriminatory Action Compensation Notice**") setting out an amount that the Sponsor proposes as the Discriminatory Action Compensation (the "**Discriminatory Action Compensation Amount**"), if any, together with details of the computation. If the Supplier does not give notice (the "**Supplier Non-acceptance Notice**") to the Sponsor stating that it does not accept the Discriminatory Action Compensation Amount proposed within thirty (30) days after the date of receipt of the Discriminatory Action Compensation Notice, the Supplier shall be deemed to have accepted the Discriminatory Action Compensation Amount so proposed. If the

Supplier Non-acceptance Notice is given, the Sponsor and the Supplier shall attempt to determine the Discriminatory Action Compensation Amount through negotiation, and any amount so agreed in writing shall be the Discriminatory Action Compensation Amount. If the Sponsor and the Supplier do not agree in writing upon the Discriminatory Action Compensation Amount within sixty (60) days after the date of receipt of the Supplier Non-acceptance Notice, the Discriminatory Action Compensation Amount shall be determined in accordance with the procedure set forth in Section 13.3(e)(ii) and Sections 16.1 and 16.2 shall not apply to such determination.

(ii) If the negotiation described in Section 13.3(e)(i) does not result in an agreement in writing on the Discriminatory Action Compensation Amount, either the Sponsor or the Supplier may, after the later of (A) the date on which a dispute with respect to the occurrence of a Discriminatory Action is resolved and (B) the date of the expiry of a period of thirty (30) days after the date of receipt of the Supplier Non-acceptance Notice, by notice to the other require the dispute to be resolved by arbitration as set out below. The Sponsor and the Supplier shall, within thirty (30) days after the date of receipt of such notice of arbitration, jointly appoint a valuator to determine the Discriminatory Action Compensation Amount. The valuator so appointed shall be a duly qualified business valuator where the individual responsible for the valuation has not less than ten (10) years' experience in the field of business valuation. If the Sponsor and the Supplier are unable to agree upon a valuator within such period, the Sponsor and the Supplier shall jointly make application (provided that if a Party does not participate in such application, the other Party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Superior Court of Justice to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario) shall govern such appointment. The valuator shall determine the Discriminatory Action Compensation Amount within sixty (60) Business Days after the date of his or her appointment. Pending a decision by the valuator, the Sponsor and the Supplier shall share equally, and be responsible for their respective shares of, all fees and expenses of the valuator. The fees and expenses of the valuator shall be paid by the non-prevailing party. "**Prevailing Party**" means the Party whose determination of the Discriminatory Action Compensation Amount is most nearly equal to that of the valuator's determination. The Supplier's and the Sponsor's respective determinations of the Discriminatory Action Compensation Amount shall be based upon the Notice of Discriminatory Action and the Discriminatory Action Compensation Notice, as applicable.

(iii) In order to facilitate the determination of the Discriminatory Action Compensation Amount by the valuator, each of the Sponsor and the Supplier shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and the Supplier shall permit the valuator and the valuator's representatives to have reasonable access during normal business hours to such information and to take extracts therefrom and to make copies thereof.

(iv) The Discriminatory Action Compensation Amount as determined by the valuator shall be final and conclusive and not subject to any appeal.

(f) Any amount to be paid under Section 13.3(d) shall bear interest at a variable nominal rate per annum equal on each day to the Interest Rate then in effect from the date of receipt of the Notice of Discriminatory Action to the date of payment.

(g) Payment of the Discriminatory Action Compensation and interest thereon by the Sponsor to the Supplier shall constitute full and final satisfaction of all amounts that may be claimed by the Supplier for and in respect of the occurrence of the Discriminatory Action and, upon such payment, the Sponsor shall be released and forever discharged by the Supplier from any and all liability in respect of such Discriminatory Action.

13.4 Right of the Sponsor to Remedy a Discriminatory Action

If the Sponsor wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the Sponsor must give notice to the Supplier within thirty (30) days after the later of the date of receipt of the Notice of Discriminatory Action and the date of the receipt by the Sponsor of the further supporting particulars referred to in Section 13.3(a). If the Sponsor gives such notice, the Sponsor must remedy or cause to be remedied the Discriminatory Action within one hundred and eighty (180) days after the date of receipt of the Notice of Discriminatory Action or, if a Notice of Dispute has been given, within one hundred and eighty (180) days after the date of the final award pursuant to Section 16.2 to the effect that a Discriminatory Action occurred. If the Sponsor remedies or causes to be remedied the Discriminatory Action in accordance with the preceding sentence, the Supplier shall have the right to obtain, without duplication, the amount that the Supplier would have the right to claim in respect of that Discriminatory Action pursuant to Section 13.2, adjusted to apply only to the period commencing on the first day of the first calendar month following the date of the Discriminatory Action and expiring on the day preceding the day on which the Discriminatory Action was remedied.

ARTICLE 14
LIABILITY AND INDEMNIFICATION

14.1 Exclusion of Consequential Damages

Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits (save and except as provided in Section 13.2), loss of use of any property or claims of customers or contractors of the Parties for any such damages.

14.2 Liquidated Damages

Nothing in this Article shall reduce a Party's claim for liquidated damages pursuant to Sections 6.3(c), 10.2(b) or 10.2(f). The Supplier acknowledges and agrees with the Sponsor that the actual damages incurred by the Sponsor and Electricity consumers as a result of a failure by the Supplier to meet its obligations under this Agreement are impossible to definitively quantify and the Supplier further agrees that the payment of the liquidated damages set forth in this Agreement and

the reduction in Term length pursuant to Article 9 constitutes a fair and reasonable means of compensating the Sponsor for damages likely to be incurred as a result of such delays and does not constitute a penalty.

14.3 Sponsor Indemnification

In addition to the indemnity provided by the Supplier in Section 2.6(c), the Supplier shall indemnify, defend and hold the Sponsor, the System Operator (to the extent that it is no longer the Sponsor), the Government of Ontario, the members of the Government of Ontario's Executive Council, and their respective Affiliates, and each of the foregoing Persons' respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "**Indemnitees**") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of:

(a) any occurrence or event relating to the Facility, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the failure of the Indemnitees to comply with Laws and Regulations; or

(b) any breach by the Supplier of any representations, warranties, and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees.

For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees' negligence or other fault contributed to any Indemnifiable Loss.

14.4 Defence of Claims

(a) Promptly after receipt by the Indemnitees of any Claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section 14.3 may apply, the Sponsor shall notify the Supplier in writing of such fact. The Supplier shall assume the defence thereof with counsel designated by the Supplier and satisfactory to the affected Indemnitees, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnitees and the Supplier and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Supplier, the Indemnitees shall have the right to select separate counsel satisfactory to the Supplier acting reasonably (at no additional cost to the Indemnitees) to participate in the defence of such action on behalf of the Indemnitees. The Supplier shall promptly confirm that it is assuming the defence of the Indemnitees by providing written notice to the Indemnitees. Such notice shall

be provided no later than five (5) days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.

(b) Should any of the Indemnitees be entitled to indemnification under Section 14.3 as a result of a Claim by a third party, and the Supplier fails to assume the defence of such Claim (which failure shall be assumed if the Supplier fails to provide the notice prescribed by Section 14.4(a)), the Indemnitees shall, at the expense of the Supplier, contest (or, with the prior written consent of the Supplier, settle) such Claim, provided that no such contest need be made and settlement or full payment of any such Claim may be made without consent of the Supplier (with the Supplier remaining obligated to indemnify the Indemnitees under Section 14.3), if, in the written opinion of an independent third party counsel chosen by the Company Representatives, such Claim is meritorious. If the Supplier is obligated to indemnify any Indemnitees under Section 14.3, the amount owing to the Indemnitees will be the amount of such Indemnitees' actual out-of-pocket loss net of any insurance proceeds received or other recovery.

ARTICLE 15
CONTRACT OPERATION AND ADMINISTRATION

15.1 Company Representative

The Supplier and the Sponsor shall by notice in the Prescribed Form, each appoint, from time to time, a representative (a "**Company Representative**"), who shall be duly authorized to act on behalf of the Party that has made the appointment, and with whom the other Party may consult at all reasonable times, and whose instructions, requests, and decisions, provided the same are in writing signed by the respective Company Representative, shall be binding on the appointing Party as to all matters pertaining to this Agreement. The Company Representatives shall not have the power or authority to amend this Agreement.

15.2 Record Retention; Audit Rights and Obligations

The Supplier and the Sponsor shall both keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained as required by Laws and Regulations but for no less than for seven (7) years after the creation of the record or data. The Supplier and the Sponsor, on a confidential basis as provided for in Article 8 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by it relating to this Agreement reasonably required for the other Party to comply with its obligations to Governmental Authorities or to verify or audit billings or to verify or audit information provided in accordance with this Agreement, including the provision of copies of documents and all other information reasonably required by the Sponsor or its Representative, which shall be delivered to the premises of the Sponsor or its Representative as directed by the Sponsor. Moreover, the Supplier agrees and consents to the System Operator or any relevant third party providing to the Sponsor, all relevant meter and invoice data regarding the Facility required by the Sponsor in order to verify the quantity of Delivered Electricity and Withdrawn Electricity. A Party may use its own employees for purposes of any such review of records provided that those employees are bound by the confidentiality requirements provided for in Article 8. Alternatively, a Party may at its own

expense appoint an auditor to conduct its audit. The Party seeking access to such records in this manner shall pay the fees and expenses associated with use of the third party auditor.

15.3 Reports to the Sponsor

(a) No later than sixty (60) days after the end of each Contract Year, the Supplier shall provide the Sponsor with an annual report in the Prescribed Form, setting out the following information:

(i) details (excluding pricing) of any capital upgrades; new, upgraded or replaced equipment; battery performance; control systems or software upgrades; and any other periodic or major capital or operating maintenance performed during the preceding Contract Year;

(ii) an accounting of all Outages during the preceding Contract Year, including the cause, duration, and steps taken to return the Facility to operation;

(iii) the status and particulars of any Additional Sources of Funding, including any amounts received, anticipated to be received, and any amounts which have become Non-Refundable; and

(iv) any other information (other than confidential third-party pricing) as requested by the Sponsor to evaluate the Facility's operations, including, for example, the Facility's operational strategy or an assessment of the effectiveness of the Facility's operating strategy.

(b) The Sponsor may, following receipt of any report provided pursuant to Section 15.3(a), request a meeting with the Supplier's personnel who have knowledge of the matters in such report, to discuss such matters. Such meeting shall be held in person in Toronto, Ontario, if mutually convenient, otherwise it may be convened by teleconference.

(c) The Supplier shall be responsible for procuring all necessary third party approvals and consents to fulfill its reporting obligations to the Sponsor.

(d) The Supplier shall provide the Sponsor with Notice upon entering into any agreement for any Additional Source of Funding and any material events occurring thereunder (including all events which would impact the Sponsor's entitlement to its share of such funding and upon any amounts becoming Non-Refundable), along with the particulars thereof. The Supplier shall, from time to time upon written request of the Sponsor, provide the Sponsor with any reasonably requested information regarding any Additional Sources of Funding.

15.4 Inspection of Facility

(a) The Sponsor's Representatives shall, at all times upon two (2) Business Days' prior notice, at any time after the Contract Date, have access to the Facility and every part thereof during regular business hours and the Supplier shall, and shall cause all personnel operating and managing the Facility, to furnish the Sponsor with all

reasonable assistance in inspecting the Facility for the purpose of ascertaining compliance with this Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of the Supplier and all personnel operating and managing the Facility, as applicable, and shall not interfere with the operation of the Facility.

(b) The inspection of the Facility by or on behalf of the Sponsor shall not relieve the Supplier of any of its obligations to comply with the terms of this Agreement. No Supplier Event of Default will be waived or deemed to have been waived by any inspection by or on behalf of the Sponsor. In no event will any inspection by the Sponsor hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.

15.5 Inspection Not Waiver

(a) Failure by the Sponsor to inspect the Facility or any part thereof under Section 15.4, or to exercise its audit rights under Section 15.2, shall not constitute a waiver of any of the rights of the Sponsor hereunder. An inspection or audit not followed by a notice of a Supplier Event of Default shall not constitute or be deemed to constitute a waiver of any Supplier Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Supplier with this Agreement.

(b) Failure by the Supplier to exercise its audit rights under Section 15.2 shall not constitute or be deemed to constitute a waiver of any of the rights of the Supplier hereunder. An audit not followed by a notice of a Sponsor Event of Default shall not constitute or be deemed to constitute a waiver of any Sponsor Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Sponsor with this Agreement.

15.6 Capacity Check Tests

(a) **Right to Request Capacity Check Test**.

(i) The Sponsor shall have the option, exercisable on no more than one (1) occasion per Season, upon providing written notice to the Supplier (a "**Capacity Check Test Notice**"), to require the Supplier in respect of the Facility, provided it is not during an Outage, to conduct a test at any time during the Availability Window within the Capacity Check Test Window, at the Supplier's sole cost and expense, that may be witnessed by the Sponsor or its Representative, to confirm the ability of the Facility to Deliver Electricity from one hundred percent (100%) of the Contract Capacity, as described below (the "**Capacity Check Test**").

(ii) The test window for the Capacity Check Test shall be any time during the Availability Window in the ten (10) consecutive Business Day period following the delivery of the Capacity Check Test Notice, provided that ambient temperature conditions, as reported at the Environment Canada weather station that is physically nearest to the Facility, do not to exceed

+35 degrees Celsius in the Summer or fall below -20 degrees Celsius in the Winter for more than fifty percent (50%) of the Availability Window (the "**Capacity Check Test Window**"). In the event that ambient temperature conditions, as reported at the Environment Canada weather station that is physically nearest to the Facility, exceed +35 degrees Celsius in the Summer or fall below -20 degrees Celsius in the Winter for more than fifty percent (50%) of the Availability Window in the ten (10) consecutive Business Days following the Capacity Check Test Notice, the Capacity Check Test Window shall be automatically extended until such time as there have been ten (10) Business Days (in aggregate) since the delivery of the Capacity Check Test Notice where ambient temperature conditions, as reported at the Environment Canada weather station that is physically nearest to the Facility, did not exceed +35 degrees Celsius in the Summer or fall below -20 degrees Celsius in the Winter for more than fifty percent (50%) of the Availability Window.

(iii) The measurements of the Capacity Check Test shall be made using high accuracy calibrated instruments and recording systems or Facility instrumentation, including tariff meters for Electricity acceptable to the Sponsor, acting reasonably and in accordance with the Metering Plan. Each Capacity Check Test consists of the Facility Delivering Electricity for at least forty-eight (48) contiguous five (5) minute intervals during the Availability Window (the "**CCT Duration**") during a period designated by the Supplier on prior written notice to the Sponsor in advance as a test period, subject to coordination and scheduling under the IESO Market Rules, and shall be evaluated based on a calculation of the generator Electricity output at the Delivery Point net of any Station Service Loads in accordance with the Metering Plan. The Supplier acknowledges and agrees that the Contract Capacity, the Electricity output of the Facility and the Station Service Loads, as may be measured by the Capacity Check Test, shall not be adjusted for ambient weather conditions.

(b) **Optional Re-Performance of a Capacity Check Test as a result of Force Majeure.**

If a Capacity Check Test is interrupted by an event of Force Majeure, then the Supplier may, at the Supplier's sole cost and expense, re-perform the Capacity Check Test within ten (10) Business Days after the receipt by the Supplier of the Capacity Confirmation relating to such Capacity Check Test from the Sponsor. Notwithstanding the foregoing, where a Capacity Check Test is interrupted by an event of Force Majeure, and the effect of such event of Force Majeure is capable of being remedied within twelve (12) hours, the Sponsor shall have the right to require the Supplier to re-perform the Capacity Check Test immediately upon the remedying of the effect of such event of Force Majeure.

(c) **Capacity Check Test Report.**

The Supplier shall at the Supplier's sole cost and expense and within two (2) Business Days after completion of the Capacity Check Test prepare and submit to the Sponsor a written Capacity Check Test report that includes the following:

(i) date and time (hh:mm) of the start and completion of the Capacity Check Test;

(ii) list of individuals and their roles who witnessed and conducted the Capacity Check Test;

(iii) data collection including a period of ten minutes prior to the scheduled start of the Capacity Check Test and a period of ten additional minutes following the Capacity Check Test completion. Data collection, prior to and after the CCT Duration will be used for information and reference only. The raw data is to be provided in .xls format for all meters and include the meter IDs (primary and alternate or secondary meters in accordance with the Metering Plan);

(iv) meter/instrument calibration certificates; and

(v) a summary of conclusions, including an assessment of whether the results of the Capacity Check Test satisfy the requirements set out in Section 15.6(d).

The Sponsor shall provide to the Supplier within ten (10) Business Days after receipt of the Capacity Check Test report from the Supplier, written confirmation of the Electricity output for each hour of the CCT Duration during the Capacity Check Test (the "**Capacity Confirmation**").

(d) **Requirements to Pass a Capacity Check Test.**

To pass the Capacity Check Test, the Test Capacity must be equal to or greater than one hundred percent (100%) of the Contract Capacity, in which case the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to 1.0, effective from the date of the Capacity Confirmation in relation to the Capacity Check Test.

(e) **Further Capacity Check Test**.

(i) If the Supplier has not passed the Capacity Check Test, then the Supplier shall, at the Supplier's cost and expense, perform a further Capacity Check Test (the "**Further Capacity Check Test**") within ten (10) Business Days after the receipt by the Supplier of the Capacity Confirmation from the Sponsor, on the same terms and conditions as the Capacity Check Test described in Section 15.6(a).

(ii) For clarity, any Further Capacity Check Test shall not count towards the Sponsor's option to require one (1) Capacity Check Test per Season. If the Test Capacity of the Capacity Check Test and of the Further Capacity Check

Test are both less than eighty-five percent (85%) of the Contract Capacity, then this shall be considered a Supplier Event of Default

(f) **Result of Further Capacity Check Test.**

(i) If the Further Capacity Check Test shows that the Test Capacity was less than one hundred percent (100%) of the Contract Capacity, then the Capacity Reduction Factor for purposes of Exhibit J shall be reduced as set out below, effective on the date of the Capacity Confirmation in relation to the Further Capacity Check Test.

(ii) The Capacity Reduction Factor shall be an amount equal to a fraction, the numerator of which is the greater of the Test Capacities resulting from the Capacity Check Test and the Further Capacity Check Test, and the denominator of which is one hundred percent (100%) of the Contract Capacity.

(g) **Final Capacity Check Test.**

If Section 15.6(f) is applicable, then the Supplier shall perform a further Capacity Check Test (the "**Final Capacity Check Test**") at the Supplier's cost and expense within ten (10) Business Days after written notice has been delivered by the Supplier to the Sponsor, no earlier than one month and no later than six (6) months after the date of the Capacity Confirmation with respect to the Further Capacity Check Test, failing which this shall be considered to be a Supplier Event of Default. The Final Capacity Check Test shall take place on the same terms and conditions as the Capacity Check Test described in Section 15.6(a) and including the delivery of the Capacity Confirmation in relation to the Final Capacity Check Test. For clarity, any Final Capacity Check Test shall not count towards the Sponsor's option to require one (1) Capacity Check Test per Season. If the Test Capacity of the Final Capacity Check Test, as stated in the Capacity Confirmation with respect to the Final Capacity Check Test:

(i) is less than eighty-five percent (85%) of the Contract Capacity, then this shall be considered a Supplier Event of Default;

(ii) is equal or greater to eighty-five percent (85%) and less than one hundred percent (100%) of the Contract Capacity, then the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to a fraction, the numerator of which is (a) the Test Capacity in relation to the Final Capacity Check Test, and the denominator of which is (b) one hundred percent (100%) of the Contract Capacity which relates to the Final Capacity Check Test; or

(iii) is equal to one hundred percent (100%) of the Contract Capacity, then the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to 1.0, effective from the date of the Capacity Confirmation in relation to the Final Capacity Check Test.

15.7 Notices

(a) All notices, consents, approvals, requests, reports and other information pertaining to this Agreement not explicitly permitted to be in a form other than writing shall be in writing and shall be addressed to the other Party as follows (each, a **"Notice"**):

If to the Supplier: Oneida Energy Storage LP
MaRS Centre, Heritage Building
101 College Street
Suite 345
Toronto, Ontario
M5G 1L7

Attention: Jason Rioux, Director
E-mail: jrioux@nrstor.com

If to the Sponsor: Independent Electricity System Operator
120 Adelaide Street West
Suite 1600
Toronto, Ontario
M5H 1T1

Attention: Director, Contract Management
E-mail: contract.management@ieso.ca

Either Party may, by written Notice to the other, change its respective Company Representative or the address to which Notices are to be sent.

(b) Notices shall be delivered or transmitted as set out below, and shall be considered to have been received by the other Party:

(i) on the date of delivery if delivered by hand or by courier prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, it being agreed that the onus of establishing delivery shall fall on the Party delivering the Notice;

(ii) in those circumstances where electronic transmission is expressly permitted under this Agreement, on the date of delivery if delivered prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, provided that a copy of such Notice is also delivered by regular post within a reasonable time thereafter; and

(iii) on the fifth (5th) Business Day following the date of mailing by registered post.

(c) Notwithstanding Section 15.7(b):

(i) any Notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery; and

(ii) if regular post service, or electronic communication is interrupted by strike, slowdown, a Force Majeure event or other cause, a Notice, direction or other instrument sent by the impaired means of communication will not be deemed to be received until actually received, and the Party sending the notice shall utilize any other such service which has not been so interrupted to deliver such Notice.

(d) No Notice to the Sponsor shall be deemed delivered unless the addressee of such Notice is identified in such Notice as "Contract Management". No Notice from the Sponsor shall be binding on the Sponsor pursuant to this Agreement unless the sender of such Notice is identified in such Notice as "Contract Management". No Notice delivered pursuant to this Agreement shall be deemed to be notice for any other purpose, including any obligation to provide notice to the System Operator pursuant to the IESO Market Rules.

ARTICLE 16
MISCELLANEOUS

16.1 Informal Dispute Resolution

If either Party considers that a dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute. Within twenty (20) Business Days following delivery of such notice to the other Party, an executive (vice-president or higher) from each Party shall meet, either in person or by telephone (the "**Senior Conference**"), to attempt to resolve the dispute. Each senior executive shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute may be settled by arbitration pursuant to Section 16.2, if agreed to by both Parties.

16.2 Arbitration

Except as otherwise specifically provided for in this Agreement, any matter in issue between the Parties as to their rights under this Agreement may be decided by arbitration provided, however, that the Parties have first completed a Senior Conference pursuant to Section 16.1. Any dispute to be decided by arbitration will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within fifteen (15) days following the agreement to refer the dispute to arbitration, upon the application of either of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change this Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding

upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

16.3 Business Relationship

Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment by such Party of Persons who perform this Agreement, including all federal, provincial, and local income, social insurance, health, payroll and employment taxes and statutorily-mandated workers' compensation coverage. None of the Persons employed by either Party shall be considered employees of the other Party for any purpose. Nothing in this Agreement shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties.

16.4 Binding Agreement

Except as otherwise set out in this Agreement, this Agreement shall not confer upon any other Person, except the Parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Agreement. This Agreement and all of the provisions of this Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

16.5 Assignment

(a) Except as set out below and as provided in Article 12, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party, including by operation of Laws and Regulations, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

(b) The Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the Sponsor to an Affiliate acquiring the Facility; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such Affiliate agrees with the Sponsor in writing to assume all of the Supplier's obligations and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 6 have been met in accordance with the terms of Article 6. If a valid assignment of this Agreement is made by the Supplier in accordance with this Section 16.5, the Sponsor acknowledges and agrees that, upon such assignment and assumption and notice thereof by the

assignor to the Sponsor, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.

(c) If the Supplier assigns this Agreement to a non-resident of Canada (the "**Assignee**"), as that term is defined in the ITA, and the Sponsor incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the Sponsor shall be reduced by the amount of such additional or withholding Taxes and the Sponsor shall remit such additional or withholding Taxes to the applicable taxing authorities. The Sponsor shall within sixty (60) days after remitting such Taxes, notify the Assignee in writing, providing reasonable detail of such payment so that the Assignee may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the Sponsor has paid such amounts, the Sponsor receives a refund, rebate or credit on account of such Taxes, then the Sponsor shall promptly remit such refund, rebate or credit amount to the Assignee.

(d) The Independent Electricity System Operator shall have the right to assign this Agreement and all benefits and obligations hereunder for the balance of the Term without the consent of the Supplier to an assignee with a Credit Rating no lower than that set forth in the fourth (4th) row of the table in Section 6.4(b)(i), which such assignee shall assume the obligations and liability of the Independent Electricity System Operator under this Agreement and be novated into this Agreement in the place and stead of the Independent Electricity System Operator (except for the Independent Electricity System Operator's obligation in Section 16.5(d)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, and further agrees to provide the Secured Lender with a written acknowledgement of the Secured Lender's rights in relation to this Agreement in the Prescribed Form, whereupon:

(i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;

(ii) all of the other representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption; and

(iii) the Independent Electricity System Operator shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Independent Electricity System Operator shall remain liable to the Supplier for remedying any payment defaults under Section 10.3(a) before any such payment default becomes a Sponsor Event of Default, and shall remain liable for any obligations and liabilities of the assignee arising from any Sponsor Event of Default. Any notice required to be given under Sections 10.3 and 10.4(a) shall be given to the assignee and to the Independent Electricity System Operator. The time periods in Section 10.3 shall not begin to run until both the assignee and the Independent Electricity System Operator have been so notified.

(e) The Independent Electricity System Operator shall have the right to assign this Agreement and all benefits and obligations hereunder from time to time throughout the Term for a period less than the balance of the Term (the "**Assignment Period**") without the consent of the Supplier to an assignee with a Credit Rating no lower than that set forth in the fourth (4th) row of the table in Section 6.4(b)(i), which such assignee shall assume the obligations of the Independent Electricity System Operator under this Agreement and be novated into this Agreement in the place and stead of the Independent Electricity System Operator (except for the Independent Electricity System Operator's obligation in Section 16.5(e)(iii) which will remain in force), provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, and further agrees to provide the Secured Lender with a written acknowledgement of the Secured Lender's rights in relation to this Agreement in the Prescribed Form, whereupon:

(i) the representation set forth in Section 7.2(a) shall apply to the assignee with all necessary amendments to reflect the form and the manner in which the assignee was established;

(ii) all of the other representations set forth in Section 7.2 shall be deemed to be made by the assignee to the Supplier at the time of such assignment and assumption;

(iii) the Independent Electricity System Operator shall be relieved of all obligations and liability arising pursuant to this Agreement; notwithstanding the foregoing, the Independent Electricity System Operator shall remain liable to the Supplier for remedying any payment defaults under Section 10.3(a) before any such payment default becomes a Sponsor Event of Default, and shall remain liable to the Supplier for any obligations and liabilities of the assignee arising from any Sponsor Event of Default. Any notice required to be given under Sections 10.3 and 10.4(a) shall be given to the assignee and to the Independent Electricity System Operator. The time periods in Section 10.3 shall not begin to run until both the assignee and the Independent Electricity System Operator have been so notified; and

(iv) upon the expiry of the Assignment Period:

(A) this Agreement, without requiring the execution of any assignment, consent or other documentation of any nature, shall automatically revert and be assigned back to the Independent Electricity System Operator;

(B) the assignee shall remain responsible to the Supplier for all obligations and liabilities incurred or accrued by the assignee during the Assignment Period; and

(C) the Independent Electricity System Operator, as Sponsor pursuant to the automatic assignment back to it, shall be deemed to be in good standing under this Agreement, provided that such good standing

shall not relieve the Independent Electricity System Operator from any obligation to the Supplier pursuant to Section 16.5(e)(iii) that arose prior to the expiry of the Assignment Period.

16.6 No Change of Control

(a) The Supplier shall not permit or allow a change of Control of the Supplier, except with the prior written consent of the Sponsor, which consent may not be unreasonably withheld. It shall not be unreasonable to withhold such consent if the change of Control will have or is likely to have, as determined by the Sponsor acting reasonably, a Material Adverse Effect on the Supplier's ability to perform its obligations under this Agreement, in which case such consent may be withheld by the Sponsor.

(b) For the purposes of Sections 16.6(a) and 16.7(a)(ii), a change of Control shall exclude, and for purposes of Section 16.7(a)(iii) the restriction therein shall exclude, (i) a change in ownership of any shares or units of ownership that are listed on a recognized stock exchange, provided that such shares or units of ownership are not those of an entity that directly owns the Facility whose special or sole purpose is the ownership of the Facility or the Facility and other facilities under a contract or other bilateral arrangements with the Sponsor that have similar change of Control restrictions; and (ii) a change of Control of NRStor Incorporated. For greater certainty, and the purposes of Sections 16.6(a) and 16.7(a)(ii), a change of Control shall include a change from no Person having Control of the Supplier to any Person having Control of the Supplier, as well as a change from any Person having Control of the Supplier to no Person having Control of the Supplier.

16.7 No Assignment or Change of Control for Specified Period; Other Rights and Restrictions

(a) Notwithstanding the provisions of Sections 16.5(a), 16.5(b), 16.5(c), and 16.6(a) to the contrary, and except as provided in Article 12 and Section 16.7(d), under no circumstances shall:

(i) any assignment of this Agreement by the Supplier, other than an assignment made pursuant to Section 16.5(b) be permitted;

(ii) any change of Control in respect of the Supplier be permitted; and

(iii) fifty percent (50%) or more of securities or ownership interests carrying votes or ownership interests in respect of the Supplier be held, directly or indirectly, whether as owner or other beneficiary and other than solely as the beneficiary of an unrealized security interest, individually or collectively by any Person or Persons who, as of the Contract Date, did not directly or indirectly hold any of such securities or ownership interests in respect of the Supplier, whether as owner or other beneficiary and other than solely as the beneficiary of an unrealized security interest,

until the third (3rd) anniversary of the Term Commencement Date. For clarity, the foregoing transfer restrictions and the restrictions set forth in Section 16.7(b) will not apply in respect of a *bona fide* enforcement of a security interest duly granted under a Security Agreement.

(b) Except as provided in Article 12, from the date of Financial Closing until the end of the Term, the Supplier shall ensure that NRStor Incorporated holds, directly or indirectly, an Economic Interest in the Supplier of no less than [redacted]% and Six Nations of the Grand River Development Corporation holds, directly or indirectly, an Economic Interest in the Supplier of no less than [redacted]%, unless otherwise consented to by the Sponsor, such consent not to be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, the consent of the Sponsor shall not be required to reduce the Economic Interest of NRStor Incorporated and/or the Six Nations of the Grand River Development Corporation to less than [redacted]% if NRStor Incorporated and/or the Six Nations of the Grand River Development Corporation, as applicable, are subject to the events or circumstances described in Section 10.1(g) hereof (insolvency); provided that the Supplier shall provide prompt written notice of such event to the Sponsor.

(c) Except as otherwise provided for in Sections 16.6(a), 16.7(a) and 16.7(b), nothing in this Agreement restricts the transfer of ownership interests in the Supplier among the owners of the Supplier.

(d) Notwithstanding Sections 16.5(a), 16.6(a) and 16.7(a), the Supplier will be permitted to complete a transaction concurrently with the execution and delivery of this Agreement pursuant to which the Supplier will assign this Agreement to a limited partnership indirectly Controlled by [redacted], provided that the requirements of Section 16.7(b) shall continue to apply to [redacted] and that [redacted] will deliver an assignment and assumption agreement to the Sponsor pursuant to which to which [redacted] will assume all of the Supplier's obligations under this Agreement and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 6 have been met in accordance with the terms of Article 6.

16.8 Survival

The provisions of Sections 2.6(c), 2.7(b), 2.10, Article 4, Article 5, Section 6.3(c), Article 8, Sections 10.2, 10.4, 10.5, and 12.2(g), Article 14, Sections 15.2, 15.3, 16.1, 16.2, 16.3, 16.4, 16.5(c) and 16.5(d) shall survive the expiration of the Term or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

16.9 Counterparts

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the

contents of this Agreement to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Agreement by electronic mail but such Party shall, within ten (10) Business Days of such delivery by electronic mail, promptly deliver to the other Party an originally executed copy of this Agreement.

16.10 Additional Rights of Set-Off

In addition to the other rights of set-off under this Agreement or otherwise arising in law or equity, either Party may set off any amounts owing to such Party under this Agreement against any amounts owed to the other Party under this Agreement.

16.11 Rights and Remedies Not Limited to Contract

Unless expressly provided in this Agreement, the express rights and remedies of the Sponsor or the Supplier set out in this Agreement are in addition to and shall not limit any other rights and remedies available to the Sponsor or the Supplier, respectively, at law or in equity.

16.12 Time of Essence

Time is of the essence in the performance of the Parties' respective obligations under this Agreement. Where the Supplier is required to provide any information or documentation to the Sponsor and no timeframe has been specified in this Agreement, the Supplier shall provide such information or documentation promptly.

16.13 Further Assurances

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to fully perform and to more effectively implement and carry out the terms of this Agreement. The Parties agree to promptly execute and deliver any documentation required by any Governmental Authority in connection with any termination of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

ONEIDA ENERGY STORAGE LP by its general partner ONEIDA ENERGY STORAGE GP INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

We have authority to bind the corporation.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____

Name:

Title:

By: _____

Name:

Title:

We have authority to bind the corporation.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

ONEIDA ENERGY STORAGE LP by its general partner ONEIDA ENERGY STORAGE GP INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

We have authority to bind the corporation.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: DocuSigned by: _____
9940E6E134E4477...

Name: Michael Lyle

Title: VP, Legal Resources & Corporate Governance

By: _____

Name:

Title:

We have authority to bind the corporation.

EXHIBIT A
FACILITY DESCRIPTION

Name of Facility:	Oneida Energy Storage

Energy Storage Technology Class:	Lithium-Ion Battery Energy Storage System
Municipal Location and Address:	Haldimand County (future street address will be confirmed with the municipality). Adjacent to and on the north side of Hydro One's Jarvis TS, which has the address: 95 Concession 2 Walpole, Nanticoke, Ontario.
Connection Point and Circuit Designation:	Dual Connection to Circuit #'s N21J and N22J approximately 200 metres north of Hydro One's Jarvis TS.
Feeder / Transformer Station / Distribution Station (if applicable):	N21J and N22J Circuits originating from HONI Jarvis TS
Connection Capacity Limit:	280 MVA

Detailed Description of Facility:

1.1 Overview including Description of Technology

Lithium-Ion Battery Energy Storage System consisting of approximately 280 outdoor battery container structures with integrated inverters operating at 480 V, 480 V / 35 kV medium-voltage transformers, and a high-voltage substation containing two main 35 kV / 230 kV step-up transformers connecting to the grid at 230 kilovolts.

1.2 Site Description (including zoning)

The lands legally described as Part of Lot 8 Concession 3 designated as Part 1 on Plan 18R-6005, in the Geographic Township of Walpole, City of Nanticoke, Ontario, in the County of Haldimand.

Zoning is "A – Agricultural Zone", per Haldimand County by-laws.

1.3 Project Design and Major Equipment (including Single Line Diagram and manufacturer's spec sheets), and Nameplate MVA Rating

The Facility is comprised of approximately 280 outdoor battery containers, each rated at 1 MW / 1 MVA / 4 MWh. The batteries are connected to 70 Dyn1 34.5kV / 480V transformers in groups of 4. Final number of battery containers, their ratings, and the total number of 70 Dyn1 34.5kV / 480V transformers will be determined during the detailed design phase of the project.

The facility is connected to Hydro One's N21J and N22J circuits. The facility connects to each circuit through two YGd1 230 kV / 34.5kV transformers. Each 34.5kV circuit connects to half the Facility's battery containers through the 34.5kV / 480V transformers.

MV and HV tie breakers connect the two halves of the Facility and exist to increase the Facility's reliability and flexibility to provide power during utility or major equipment outages.

1.4 Environmental Features (including a description of features and technologies that mitigate environmental concerns in relation to air quality, noise, water, sewage discharge, etc.):

The Facility is not expected to have any environmental impacts requiring mitigation measures, other than resulting ambient noise levels that may be higher than existing levels. As such, through the Class Environmental Assessment for Minor Transmission Facilities, it was confirmed that sound mitigating walls may be required to be installed around the main transformers and a portion of the western boundary, so that compliance with all regulatory noise limits is maintained. The final design for any such sound mitigation will be designed and confirmed through the Environmental Compliance Approval process prior to COD.

1.5 List of All Approvals and Permits, and Status (including a description of the Facility's treatment under the Ontario Ministry of the Environment's "Guide to Environmental Assessment Requirements for Electricity Projects").

PERMIT	COUNTERPARTY	NOTES	STATUS
Archeological Study (Phase I and II)	Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTC)	Report Submitted and accepted by MHSTC	Complete
Environmental Assessment - Hydro One Class EA for MTF	Ministry of the Environment, Conservation and Parks (MECP)	Report Submitted and accepted by MECP	Complete
Species at Risk	Ministry of the Environment, Conservation and Parks (MECP)	Study Complete, Part of Class EA submission	Complete
Environmental Compliance Approval (ECA) -Noise and Vibration	Ministry of the Environment, Conservation and Parks (MECP)	Required prior to COD	Ongoing
Environmental Site Assessment (ESA) - Phase I and II	Oneida Energy Storage LP	Developer DD only. Not required for regulatory approval.	Complete
Building Permit	Haldimand County	To be obtained by EPC Contractor	Ongoing
Municipal Road Use / Entrance Permit	Haldimand County	To be obtained by EPC Contractor	Ongoing
Electrical Permit	Electrical Safety Authority (ESA)	To be obtained by EPC Contractor	Ongoing
OEB License	Ontario Energy Board		Complete
System Impact Assessment	Independent Electricity System Operator (IESO)	SIA Report Issued by IESO	Complete
Connection Impact Assessment	Hydro One Networks Inc. (HONI)	CIA Report issued by HONI	Complete
RAN Completion of Market Approval Process	Independent Electricity System Operator (IESO)	Required prior to COD	Ongoing

1.6 Electrical Interconnection (including description of work required to connect Facility)

The Facility will be connected to Hydro One's N21J and N22J circuits. These circuits are 230kV 3.155km BPS transmission lines between Nanticoke TS and Jarvis SS. The Facility's connection to the circuits shall be made via 230kV / 34.5kV YGd1 transformers and approximately 0.5km 230 kV overhead tap lines to Jarvis SS.

EXHIBIT B
CONTRACT CAPACITY, NET REVENUE REQUIREMENT, AND OTHER STATED VARIABLES

Contract Capacity	**Contract Year**	**Contract Capacity (MW)**
	Year 1	250.00
	Year 2	245.00
	Year 3	240.00
	Year 4	236.25
	Year 5	233.75
	Year 6	230.00
	Year 7	227.50
	Year 8	225.00
	Year 9	222.50
	Year 10	220.00
	Year 11	217.50
	Year 12	215.00
	Year 13	213.75
	Year 14	211.25
	Year 15	208.75
	Year 16	207.50
	Year 17	205.00
	Year 18	202.50
	Year 19	201.25
	Year 20	200.00
Net Revenue Requirement (NRR_B)	To be established pursuant to Section 4.6	
Net Revenue Requirement Indexing Factor (NRRIF)	0.25	

EXHIBIT C
AVAILABILITY AND RELIABILITY

Availability

1. The availability of the Facility in respect of a given Settlement Month (the "**Availability**") shall be calculated as set out below:

a) First Contract Year

The Availability of the Facility will not be tested during the first Contract Year.

b) Second and Subsequent Contract Years

The Availability of the Facility for each Settlement Month in the second and subsequent Contract Years shall be calculated as follows:

AV = [(THM – OH – FMH) / (THM – FMH)] x 100	
where:	
AV	is the Availability of the Facility (expressed as a percentage figure).
THM	is the total number of hours during all Availability Windows in the most recent 36-month period during the Term which ends on the last day of the Settlement Month for which Availability is being calculated (but, for greater certainty, excluding any period prior to COD) (the "**Availability Measurement Period**"); provided, however, the Availability Measurement Period for the second and third Contract Years shall equal the period of time commencing on COD and ending on the last day of the Settlement Month for which Availability is being calculated.
OH	is the total (without duplication) of the number of Outage Hours and the number of hours in which the Facility failed to comply with the Must-Offer Obligations during the Availability Windows in the Availability Measurement Period, subject to the following: a) in determining Outage Hours occurring during an Availability Window, an hour may be a partial Outage Hour as a result of an inability of the Facility to produce at the full Contract Capacity or as a result of an Outage lasting for a part but not all of an hour. An hour in which either of such partial Outages occurs (or both of them) will be counted as a fractional Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum output in that hour that could have been achieved given the partial Outage or derate (in MWh) by (ii) the Contract Capacity multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the OH in the given Settlement Month;

	b) in determining hours in the Availability Windows in which the Facility failed to comply with the Must-Offer Obligations, an hour may be a partial hour as a result of a failure to offer at the full available Contract Capacity or as a result of a failure to offer at the full available Contract Capacity lasting for a part but not all of an hour. An hour in which there is a failure to offer at the full available Contract Capacity will be counted as a fractional OH by subtracting from one the quotient obtained by dividing: (i) the maximum Contract Capacity offered in that hour by (ii) the full available Contract Capacity. This fraction will be the contribution of that hour to the OH in the given Settlement Month; and c) OH shall not include (i) the hours of any Outage or the hours in which the Facility failed to comply with the Must-Offer Obligations that, in each case, are outside of an Availability Window, (ii) the hours of any full or partial Outage caused by an outage on the IESO-Controlled Grid, or (iii) the hours of any Outage that are also FMH.
FMH	is the total number of hours in all Availability Windows in the Availability Measurement Period during which the Supplier was subject to an event of Force Majeure having a duration of 168 consecutive hours or longer (which hours, for clarity, can be within or outside an Availability Window). For clarity, FMH (i) may include any hours subject to a Supplier event of Force Majeure resulting in a partial derate of the Contract Capacity, and (ii) may result in only a portion of the Facility being on an Outage or failing to comply with the Must-Offer Obligations, provided in all cases the event of Force Majeure lasts for a duration of 168 consecutive hours or longer, in which case FMH shall include all such hours (including, for clarity, the 168 consecutive hours).

Reliability

2. The reliability of the Facility in respect of a given Settlement Month (the "**Reliability**") shall be calculated as set out below:

a) First Contract Year

The Reliability of the Facility will not be tested during the first Contract Year.

b) Second and Subsequent Contract Years

The Reliability of the Facility for each Settlement Month in the second and subsequent Contract Years shall be calculated as follows:

Reliability = [(THM – OH) / THM] x 100	
where:	
THM	is the total number of hours during all Availability Windows in the most recent 12-month period which ends on the last day of the Settlement Month for which Reliability is being calculated.
OH	is the total (without duplication) of the number of Outage Hours and the number of hours in which the Facility failed to comply with the Must-Offer Obligations during the Availability Windows in the most recent 12-month period which ends on the last day of the applicable Settlement Month for which Reliability is being calculated, subject to the same conditions (a), (b), and (c) that apply to the definition of OH for the purposes of calculating Availability.

3. If, in respect of any Settlement Month, Reliability is less than [redacted]%, the RRF shall be calculated as set out below. For clarity, if, in respect of any Settlement Month, Reliability is greater than or equal to [redacted]%, RRF shall be equal to 1.0.

RRF_m = [(THM_m – (2 × POH_m) – $OPOH_m$) / THM_m] / [redacted]	
where:	
RRF_m	is the RRF applicable to Settlement Month "m".
THM_m	is the total number of hours during all Availability Windows in the most recent 12-month period which ends on the last day of the Settlement Month for which Reliability is being calculated.
POH_m	is the total (without duplication) of the number of Outage Hours and the number of hours in which the Facility failed to comply with the Must-Offer Obligations during the Availability Windows in the months of June, July, August and September falling in the most recent 12-month period which ends on the last day of the applicable Settlement Month for which Reliability is being calculated, subject to the same conditions (a), (b), and (c) that apply to the definition of OH for the purposes of calculating Availability.
$OPOH_m$	is the total (without duplication) of the number of Outage Hours and the number of hours in which the Facility failed to comply with the Must-Offer Obligations during the Availability Windows in the months other than June, July, August and September falling in the most recent 12-month period which ends on the last day of the applicable Settlement Month for which Reliability is being calculated, subject to the same conditions (a), (b), and (c) that apply to the definition of OH for the purposes of calculating Availability.

EXHIBIT D
FORM OF SECURED LENDER CONSENT AND ACKNOWLEDGMENT AGREEMENT

THIS AGREEMENT made as of this _____ day of _____, 20_____,

BETWEEN:

ONEIDA ENERGY STORAGE LP,
a limited partnership formed under the laws of the Province of Ontario

(the "**Supplier**")

- and -

[●],
in its capacity as **[**{Secured Lender under the Contracts}** or
{*insert form of Secured Lender representation, e.g., security trustee, collateral agent and trustee, etc. for and on behalf of the Secured Lenders (as defined below)*}**]**

(the "**Collateral Agent**")

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR,
a statutory corporation without share capital amalgamated
under the laws of the Province of Ontario

(the "**Sponsor**")

RECITALS:

A. The Supplier and the Sponsor are parties to an Energy Storage Facility Agreement dated as of ●, 20●, contract reference # ● (as amended, supplemented, restated or replaced from time to time in accordance with its terms, the "**Energy Storage Facility Agreement**") in order to formalize the long-term contractual arrangements for the Supplier to construct, operate and maintain the Facility;

B. ***[Note to finalization: describe structure of collateral arrangements; describe any bond issuance and related trust indentures; identify underlying security and debt documents; identify the "Secured Lenders" if they are anyone other than the Collateral Agent; identify any intercreditor or collateral agency arrangements];***

C. The Supplier has granted security against, inter alia, all of its right, title, entitlement and interest in and to the Energy Storage Facility Agreement in favour of the Collateral Agent pursuant to the security agreements and any applicable credit agreement identified in Schedule "A" (collectively, as amended, supplemented, restated or replaced from time to time, the "**Security Agreements**"), as security for its present and future indebtedness, liabilities and obligations under and in respect of the ***[Note to finalization: describe underlying debt instrument(s)]*** (the "**Secured Debt**"); and

D. The Supplier has agreed and the Collateral Agent acknowledges that the Secured Debt secured by the Security Agreements is only for the purposes of financing the Supplier's acquisition,

development, construction, ownership, operation and maintenance of the Facility and any refinancing of any such debt, and for no other purpose;

THEREFORE, the parties agree as follows:

1. Defined Terms

Unless otherwise provided in this agreement or the context otherwise requires, all capitalized terms which are not defined in this agreement have the respective meanings given to them in the Energy Storage Facility Agreement, and "including" shall mean "including without limitation".

2. Acknowledgement and Confirmation of Rights of Collateral Agent

(a) The Sponsor, the Collateral Agent and the Supplier each acknowledge and confirm that:

(i) the Supplier has delivered to the Sponsor copies of the Security Agreements listed on Schedule "A";

(ii) the Security Agreements listed on Schedule "A" are acknowledged to be Security Agreements to which the provisions of Article 12 of the Energy Storage Facility Agreement apply; and

(iii) subject to Section 2(b), the Collateral Agent constitutes the Secured Lender for purposes of the Energy Storage Facility Agreement and, without limiting the generality of the foregoing, is entitled to the benefit of the provisions of Article 12 of the Energy Storage Facility Agreement in favour of a Secured Lender and is entitled to enforce the same as if the Collateral Agent were a party to the Energy Storage Facility Agreement, until such time as Sponsor has received notice from the Collateral Agent that the Security Agreements have been terminated.

(b) The Collateral Agent acknowledges, confirms and agrees that:

(i) it has read and understood the requirements and restrictions pertaining to a Secured Lender Security Agreement in Section 12.1 of the Energy Storage Facility Agreement;

(ii) it has complied with Section 12.1 in entering into financing and security documents with the Supplier, including the Secured Lender Security Agreement(s), in respect of the Energy Storage Facility Agreement;

(iii) the Sponsor's recognition of the Secured Lender's rights under this agreement does not extend to security for indebtedness or liability other than indebtedness or liability relating to the Facility, nor does it extend to security over assets unrelated thereto, and the Secured Lender is only entitled to the protections of this agreement to the extent that the indebtedness being enforced and giving rise to the exercise of security is indebtedness relating only to the financing of the Facility; and

(iv) it shall not exercise its rights under the Secured Lender Security Agreements to acquire or dispose of the Facility except in respect of liability or indebtedness of the Supplier relating to that Facility.

Notwithstanding any other provision of this agreement, no Security Agreement other than the Security Agreements listed on Schedule "A" shall be entitled to the benefit of the provisions of Article 12 of the Energy Storage Facility Agreement, unless and until the Sponsor has received a copy thereof (as provided for in Section 12.1 of the Energy Storage Facility Agreement) and each of the parties has acknowledged such additional Security Agreement by fully executing an amendment to Schedule "A" to include such additional Security Agreement. It is a condition precedent to the acknowledgement and confirmation provided in this Section 2 that the representations and warranties contained in Sections 3 and 4 hereof are true and accurate.

3. Covenants of the Collateral Agent

The Collateral Agent covenants and agrees with the Sponsor (and in the case of paragraphs (c), (d), (f), (i), (k), (m), and (o) below, covenants, agrees, represents and warrants to the Sponsor) as follows:

(a) Should the Collateral Agent enforce the Security Agreements with respect to the Energy Storage Facility Agreement, it will comply with the terms, conditions and obligations applicable to a Secured Lender under Section 12.2 of the Energy Storage Facility Agreement as they relate to the Collateral Agent's security interests in the Energy Storage Facility Agreement during such enforcement.

(b) The Collateral Agent agrees that it is in compliance and will comply with Section 12.2 of the Energy Storage Facility Agreement.

(c) The Collateral Agent **[*Note to finalization*:** (*is and will be*) or (*is not*)**]** at Arm's Length from the Supplier.

(d) The Security Agreements listed on Schedule "A" constitute all of the security granted by the Supplier in favour of the Collateral Agent as at the date first written above.

(e) Except for the Security Agreements and any other security that is delivered by the Collateral Agent to the Sponsor in accordance with Section 12.2 of the Energy Storage Facility Agreement, the Collateral Agent acknowledges that any other security granted in favour of the Collateral Agent will not impose any obligations upon the Sponsor pursuant to the Energy Storage Facility Agreement.

(f) All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) or similar registrations made in respect of a security interest in personal property (or its equivalent) in any other jurisdiction(s) in respect of the Security Agreements are set out in Schedule "A".

(g) All of the registrations made in connection with real property (or its equivalent) in respect of the Security Agreements are set out in Schedule "A".

(h) If the Supplier is in default under or pursuant to any Security Agreement and the Collateral Agent intends to exercise any rights afforded to it with respect to the Energy Storage Facility Agreement, then the Collateral Agent will give notice of such default to the Sponsor at least 10 Business Days prior to exercising any such rights under the Energy Storage Facility Agreement.

(i) The Collateral Agent has entered into this agreement and holds the security granted pursuant to the Security Agreements on behalf of all parties having any right, title or interest in the Security Agreements.

(j) Only the Collateral Agent, or such other entity from time to time appointed by the parties having any right, title or interest in the Security Agreements, will be entitled to exercise the rights and remedies under the Security Agreements as the Secured Lender except that in accordance with Section 12.2 of the Energy Storage Facility Agreement, when the Collateral Agent has appointed an agent, a receiver or a receiver and manager, or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Collateral Agent's security, that Person may exercise any of the Collateral Agent's rights under Section 12.2 of the Energy Storage Facility Agreement.

(k) The address of the Collateral Agent to which notices may be sent pursuant to Section 12.2 of the Energy Storage Facility Agreement is set forth in Section 6 of this agreement.

(l) The Collateral Agent will provide the Sponsor with written notice of any change in the identity or address of the Collateral Agent, and the Collateral Agent agrees to promptly notify Sponsor in writing of any discharge or termination of all or any of the Security Agreements listed on Schedule "A".

(m) The recitals to this agreement are true and accurate.

(n) The sale, assignment or other transfer by the Collateral Agent of any rights in shares, partnership interests or similar rights in the capital of the Supplier in respect of which the Collateral Agent holds a security interest granted pursuant to the Security Agreements shall be subject to Section 12.2 of the Energy Storage Facility Agreement.

(o) The Security Agreements have been and shall be entered into, and any security thereunder has been and shall be held and assigned, solely by way of security and not for any other purpose. The Collateral Agent acknowledges that any acknowledgement, agreement or confirmation of the Sponsor hereunder is not and shall not be construed as a consent to any assignment of the Energy Storage Facility Agreement or to any change of Control of the Supplier other than for the *bona fide* enforcement of a security interest duly granted under a Security Agreement as provided for in Article 12 of the Energy Storage Facility Agreement.

4. Covenants of the Supplier

The Supplier covenants, agrees, represents and warrants to the Sponsor as follows:

(a) The Security Agreements are subject to the terms and conditions applicable to a Secured Lender's Security Agreement that are contained in Article 12 of the Energy Storage Facility Agreement, and comply therewith.

(b) The Supplier has provided to the Sponsor true and complete copies of the Security Agreements listed on Schedule "A", and such Security Agreements constitute Secured Lender's Security Agreements and the Collateral Agent constitutes a Secured Lender for purposes of the Energy Storage Facility Agreement.

(c) All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) or similar registrations made in respect of a security interest in personal property (or its equivalent) in any other jurisdiction(s) in respect of the Security Agreements are set out in Schedule "A".

(d) All of the registrations made in connection with real property (or its equivalent) in respect of the Security Agreements are set out in Schedule "A".

(e) The recitals to this agreement are true and accurate and the Supplier agrees that all Secured Debt will have been incurred in connection with the acquisition, ownership, operation and maintenance of the Facility, and any refinancing of any such debt.

(f) The Supplier will provide the Sponsor with true and complete copies of any new agreements relating to, or amendments to, any Secured Lender's Security Agreement

(g) The Supplier will provide the Sponsor with a revised Schedule "A" to be appended hereto in the event that any new registrations or amendments to any existing registrations of the type referred to in Sections 4(c) or (d) are made and such revised Schedule "A" shall include reference to any such new registrations or amendments.

(h) The Security Agreements do not and will not secure any indebtedness, liability or obligation of the Supplier that is not related to the Facility or cover any real or personal property of the Supplier not related to the Facility.

(i) There is no existing unremedied Supplier Event(s) of Default.

(j) The Security Agreements have been and shall be entered into, and any security thereunder has been and shall be held and assigned, solely by way of security and not for any other purpose. The Supplier acknowledges that any acknowledgement, agreement or confirmation of the Sponsor hereunder is not and shall not be construed as a consent to any assignment of the Energy Storage Facility Agreement or to any change of Control of the Supplier other than for the *bona fide* enforcement of a security interest duly granted under a Security Agreement.

5. Notice of Default by Collateral Agent

The parties hereto agree that the Sponsor shall not be bound or have any obligation to make any inquiry regarding the status of the Supplier's account with the Collateral Agent or regarding any breach or default under or pursuant to the Security Agreements other than the written notice (a "**Default Notice**") to be given to the Sponsor by the Collateral Agent pursuant to Section 12.1 of the Energy Storage Facility Agreement, which may be accepted by the Sponsor as conclusive evidence of the Supplier's default thereunder. Following receipt by the Sponsor of a Default Notice, the Sponsor may at all times, subject to transfer of such interest or entry into a New Agreement in accordance with Article 12 of the Energy Storage Facility Agreement, rely on the instructions (the "**Collateral Agent's Instructions**") of the Collateral Agent or its nominee or agent or a receiver or receiver and manager appointed in accordance with Section 12.2 until the Default Notice is withdrawn by the Collateral Agent by written notice to the Sponsor. The Sponsor shall have no liability to the Supplier for honouring a Default Notice or any Collateral Agent's Instructions and the Supplier hereby agrees to indemnify the Sponsor and hold it harmless in respect of any losses or claims incurred or suffered by the Sponsor due to or arising out of Sponsor honouring any Default Notice or complying with any Collateral Agent's Instructions, and the sole remedy of the Supplier in any such circumstances shall be against the Collateral Agent. Prior to receipt by the Sponsor of a Default

Notice, the Sponsor may at all times rely on the instructions of the Supplier (the "**Supplier's Instructions**"). The Sponsor shall have no liability to the Collateral Agent for complying with any Supplier's Instructions prior to such receipt, subject to Section 12.1(h) of the Energy Storage Facility Agreement.

6. Notice

All notices pertaining to this agreement not explicitly permitted to be in a form other than writing will be in writing and will be given by means of electronic transmission or by hand or courier delivery. Any notice will be addressed to the parties as follows:

If to the Supplier:

- ●
- ●
- ●
- ●

Attention: ●
Email: ●

If to the Sponsor:

Independent Electricity System Operator
120 Adelaide Street West
Suite 1600
Toronto, Ontario
M5H 1T1

Attention: Contract Management
Email: contract.management@ieso.ca

If to the Collateral Agent:

- ●
- ●
- ●
- ●

Attention: ●
Email: ●

Notice delivered or transmitted as provided above will be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if a notice is delivered or transmitted after 5:00 p.m. local time or such day is not a Business Day, then such notice will be deemed to have been given and received on the next Business Day. Any party may, by written notice to the other parties, change its respective representative or the address to which notices are to be sent.

7. Successors and Assigns

Subject to complying with Section 12.1 and Article 16 of the Energy Storage Facility Agreement, the benefits under this agreement accruing to each of the parties to this agreement will extend to all their respective successors and permitted assigns, only if they agree, according to their interests, to be bound by all the provisions of this agreement (it being the responsibility of each party to give notice to each other party of such assignment and to require its successors and permitted assigns to expressly acknowledge and agree in favour of each other party to be bound by this agreement). Subject to complying with Section 12.1(d) and Section 16.5 of the Energy Storage Facility Agreement, upon the acquisition by any such successor or permitted assign of such an interest, such successor or permitted assign will be joined, as a party benefiting and bound by this agreement, by an appropriate further agreement supplementary to this agreement in form and substance acceptable to the Sponsor, acting reasonably.

8. No Waiver

The parties hereto confirm that the Energy Storage Facility Agreement remains in full force and effect in accordance with its terms and that this agreement shall not be deemed to waive or modify in any respect any rights of the Sponsor under the Energy Storage Facility Agreement. Without limiting the forgoing, this agreement shall not constitute or be deemed to constitute:

(a) a waiver of any Supplier Event of Default or other default of the Supplier;

(b) waiver of any prohibition or restriction on, or the Sponsor's consent to, any assignment of the Energy Storage Facility Agreement or change of Control under the Energy Storage Facility Agreement; or

(c) an acknowledgement that there has been or will be compliance by the Supplier with the Energy Storage Facility Agreement, except to the extent of the acknowledgement of the rights of the Collateral Agent as expressly provided herein.

The parties hereto acknowledge and agree that this agreement is being entered into pursuant to, and with respect to, the Energy Storage Facility Agreement only and shall not be construed as an amendment or waiver of any other agreement. This agreement, and any notice delivered pursuant to this agreement, shall not be deemed to be notice for any other purpose, including any obligation to provide notice to the System Operator pursuant to the IESO Market Rules.

9. Execution and Delivery

This agreement may be executed by the parties hereto in counterparts and may be executed and delivered by PDF and all such counterparts and PDFs will together constitute one and the same agreement.

10. Governing Law

This agreement will be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.

[EXECUTION PAGE IMMEDIATELY FOLLOWS]

IN WITNESS OF WHICH, the parties have duly executed this agreement as of the date first written above.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____

Name:

Title:

ONEIDA ENERGY STORAGE LP, by its general partner, ONEIDA ENERGY STORAGE GP INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

[SECURED LENDER]

By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE "A"

LIST OF SECURITY AGREEMENTS AND REGISTRATION DETAILS

The following Security Agreements were granted by the Supplier in favour of the Collateral Agent (each of which was dated ●, 20●):

(a) ●

(b) ●

(c) ●

The following registrations were made in the following jurisdictions against the Supplier in favour of the Collateral Agent:

●

EXHIBIT E
DETERMINATION OF REGULATORY CHARGE CREDIT

1. Regulatory Charge Credit

This Exhibit E sets out the calculation of the Regulatory Charge Credit for a given Settlement Month "m":

RCC_m = $GREA_m \times RAF_m$	
where:	
RCC_m	is the Regulatory Charge Credit for Settlement Month "m" (in $).
$GREA_m$	is the Gross Reimbursable Energy Adder for Settlement Month "m" (in $), and is calculated as the sum of all Regulatory Energy Charges incurred by the Supplier in respect of Withdrawn Electricity by the Facility during Settlement Month "m", plus the GA Amount determined in accordance with Section 2 of this Exhibit E.
RAF_m	is the Reimbursement Adjustment Factor in respect of Settlement Month "m", and is calculated as $AMRTE_m$ divided by RRE, provided that the RAF_m shall not be greater than 1.0.
$AMRTE_m$	is the Apparent Monthly Round Trip Efficiency for Settlement Month "m" and is calculated as the total Delivered Electricity by the Facility during the most recent three (3) month period which ends on the last day of Settlement Month "m" divided by the total Withdrawn Electricity by the Facility during the most recent three (3) month period which ends on the last day of Settlement Month "m".
RRE	is the Reimbursement Reference Efficiency, and is equal to 0.80.

2. GA Reimbursement

The amount of Global Adjustment included in the Gross Reimbursable Energy Adder (the "**GA Amount**") shall be determined as follows:

2.1 The GA Amount shall be calculated as the amount of Global Adjustment incurred by the Supplier (net of any credits on account of Global Adjustment) in respect of the Facility, until such time as the Facility is eligible to begin participation in the Industrial Conservation Initiative ("**ICI**") program or any successor or replacement program designed to reduce the Facility's Global Adjustment cost (each, an "**ICI Successor Program**").

2.2 If at any time there is: (A) a change in the basis upon which Global Adjustment is allocated to the Facility, or (B) a change to the ICI or any ICI Successor Program, then subject to Section 2.3 of this Exhibit E, the GA Amount shall be calculated as the amount of any Global Adjustment incurred (net of any credits on account of Global Adjustment) in respect of the Facility, other than any amount of Global Adjustment that the Supplier would have avoided had the Facility not been drawing power from the IESO-Controlled Grid during any peak demand periods ("**Peak Demand**

Periods") prescribed at the applicable time for the purposes of the allocation of Global Adjustment to a prescribed class of electricity consumers to which the Facility or the Supplier is eligible to belong.

2.3 At any time the Supplier is entitled to a reimbursement of Global Adjustment under the Agreement, the Supplier shall use commercially reasonable efforts to cause the Facility to participate in the ICI program or any ICI Successor Program.

2.4 For greater certainty, and provided that the Supplier has complied with Section 2.3 of this Exhibit E but without limiting Section 2.1 of this Exhibit E in any way, so long as the Facility has not drawn power from the IESO-Controlled Grid during any Peak Demand Periods, the GA Amount shall be equal to the Global Adjustment incurred in respect of the Facility, if any.

EXHIBIT F
MILESTONE DATES

	MILESTONE EVENT	MILESTONE DATE (Month/Day/Year)
1.	Milestone Date for Commercial Operation	The date that is 30 months after the Contract Date.
2.	Longstop Date	The date that is 12 months after the Milestone Date for Commercial Operation.

EXHIBIT G
NOT USED

EXHIBIT H
FORM OF INDEPENDENT ENGINEER CERTIFICATE

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO

mailto:contract.management@ieso.ca

Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Date	
Legal Name of Supplier	
Name of Facility	
Contract Title	(the "**Contract**")
Contract Date	
Legal Name of Independent Engineer	

WHEREAS subsection 2.4(a)(i) of the Contract between the Supplier and the Sponsor dated as of [Contract Date] requires the Supplier to cause the Sponsor to have received a certificate (this "**Certificate**") addressed to it from an Independent Engineer containing certain statements with respect to the Facility;

AND WHEREAS [Legal Name of Independent Engineer] (the "Undersigned") acts as the Independent Engineer for the purposes of delivery of this Certificate;

NOW THEREFORE, THE UNDERSIGNED CERTIFIES to the Sponsor, and acknowledges that the Sponsor is relying on this Certificate, that:

i) the Undersigned is duly qualified and licensed to practice engineering in the province of Ontario;

ii) the Undersigned is neither an employee nor a consultant of the Supplier such that the majority of either the time or billings of the Undersigned during the 18 month period prior to the date hereof were devoted to the Facility;

iii) the Undersigned is not an affiliate of the Supplier nor directly or indirectly Controlled by the Supplier;

iv) that each of the required statements set out in subparagraphs (A) to (D), inclusive, of Section 2.4(a)(i) of the Contract are true, correct, and have been satisfied with respect of the Facility.

Signed this [Day] day of [Month, Year]

[Legal Name of Independent Engineer]

By: _____
Name: ●
Title: ●

Professional Engineer Stamp of Signing Engineer

By: _____
Name: ●
Title: ●

EXHIBIT I
FORM OF SUPPLIER'S CERTIFICATE

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO
contract.management@ieso.ca

Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

Date	
Legal Name of Supplier	
Name of Facility	
Contract Title	(the "**Contract**")
Contract Date	
Commercial Operation Date or Term Commencement Date	
Beginning of the Hour Ending	01:00 hours (EST)

WHEREAS subsection 2.4(a)(ii) of the Contract between [Supplier Short Name] and the Sponsor dated as of [Contract Date] required the Supplier to provide the Sponsor with a certificate (this "**Certificate**") addressed to it from the Supplier containing certain statements with respect to the Facility;

NOW THEREFORE, [SUPPLIER LEGAL NAME] CERTIFIES to the Sponsor that:

a) **[Independent Engineering Company Legal Name]** is:

i) duly qualified and licensed to practice engineering in the province of Ontario and which holds a certificate of authorization issued by Professional Engineers Ontario;

ii) does not have a vested interest in the design, engineering, procurement, construction, metering and/or testing of the facility; and

iii) not an affiliate of [Supplier Short Name] nor directly or indirectly Controlled by [Supplier Short Name].

b) **[Supplier Short Name]** has provided to the Sponsor the following documentation required to be so provided:

i) Certificate of an independent professional engineer using IESO's "Form of Independent Engineer Certificate" in accordance with Section 2.4(a)(i) of Contract;

ii) As-built single line diagram in respect of the Facility;

iii) Insurance certificates required pursuant to Section 2.8 of the Contract, including without limitation, certificates in respect of:

1) All-risk property insurance;

2) Equipment breakdown insurance (if applicable);

3) Commercial general liability insurance; and

4) Environmental/pollution liability insurance;

iv) *Workplace Safety and Insurance Act* (Ontario) clearance certificate pursuant to Section 2.8;

v) Metering Plan that has been approved by the Sponsor; pursuant to Section 2.7;

vi) Ontario Energy Board Electricity Storage License; and

vii) copies of all permits and approvals issued by Governmental Authorities which are required to construct, operate and maintain the Facility in accordance with Laws and Regulations.

Signed this [Day] day of [Month, Year]

[Legal Name of Supplier]

Per: _____

Name: ●

Title: ●

EXHIBIT J
CALCULATION OF MONTHLY PAYMENT

This Exhibit J sets out the calculation of the Monthly Payment for a given Settlement Month "*m*" in Contract Year "*y*".

Except as expressly set forth below, all references to Sections are to Sections of the Agreement.

1. DETERMINATION OF MONTHLY PAYMENT

1.1 The Monthly Payment is calculated as follows:

$\mathbf{MP_m} = (CC_m \times CRF_m \times RRF_m \times FMCRF_m \times NRR_m) - EAFCRP_m$	
where:	
MP_m	is the Monthly Payment (in $ for the Settlement Month "m"), provided that if the Settlement Month is the first or last Settlement Month of the Term, the MP_m for the Settlement Month will be prorated for the number of days of the Term in the Settlement Month and the Monthly Payment shall be calculated as follows: $\mathbf{MP_m} = (CC_m \times CRF_m \times RRF_m \times FMCRF_m \times NRR_m) \times (SMD_m/CMD_m) - EAFCRP_m$
SMD_m	is the number of days in the Settlement Month "*m*" (i.e. the number of days of the Term in such month).
CMD_m	is the total number of days in the calendar month in which the Settlement Month "*m*" falls.
CC_m	is the Contract Capacity applicable to Settlement Month "m", provided that where the Contract Capacity changes during a Settlement Month, the weighted average Contract Capacity shall be used.
CRF_m	is the Capacity Reduction Factor applicable to Settlement Month "m", provided that where the Capacity Reduction Factor changes during a Settlement Month, the weighted average Capacity Reduction Factor shall be used.
RRF_m	is the Reliability Reduction Factor applicable to Settlement Month "m" calculated in accordance with Exhibit C.
$FMCRF_m$	is the Force Majeure Capacity Reduction Factor for Settlement Month "*m*" which shall be equal to 1.0 unless there are hours in the Settlement Month within an Availability Window in which the Contract Capacity

	is the subject of an event of Force Majeure, in which case it shall be calculated as follows: $\mathbf{FMCRF_m} = 1 - \frac{FMOH_m}{N_m}$
N_m	is the total number of hours within the Availability Windows in Settlement Month "*m*".
FMOH	is a Force Majeure Outage Hour, which is an hour within an Availability Window in which the Contract Capacity is the subject of an event of Force Majeure.
$FMOH_m$	is the total number of Force Majeure Outage Hours in Settlement Month "*m*". In determining Force Majeure Outage Hours during a Settlement Month, an hour may be a partial Force Majeure Outage Hours as a result of an inability of the Facility to produce at the full Contract Capacity or as a result of an event of Force Majeure lasting for a part but not all of an hour. An hour in which either of such partial Force Majeures occurs (or both of them) will be counted as a fractional Force Majeure Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum output of the Facility in that hour that could have been achieved given the partial Force Majeure or derate (in MWh) by (ii) the Contract Capacity multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the FMOH in the given Settlement Month.
NRR_B	is the Net Revenue Requirement (in $/MW-month) established pursuant to Section 4.6.

NRR_m	is the Net Revenue Requirement applicable to Settlement Month "m" (in $/MW-month). For each Settlement Month in the first Contract Year, the Net Revenue Requirement shall be equal to the amount established pursuant to Section 4.6. For the second and each succeeding Contract Year, a portion of the Net Revenue Requirement shall be adjusted on the first day of such Contract Year to the percentage increase or decrease (if any) between the CPI effective as of the first day of such Contract Year compared with the CPI effective as of the month in which COD occurs. The NRR_m shall be calculated as follows: $\mathbf{NRR_m} = (NRR_B \times NRRIF \times IF_y) + (NRR_B \times (1\text{-}NRRIF))$
NRRIF	is the Net Revenue Requirement Indexing Factor set out in Exhibit B, and expressed as a decimal figure.
IF_y	is the Index Factor for Contract Year "y" and shall be calculated as follows: $IF_y = CPI_y / CPI_B$
CPI_y	is the CPI applicable to the calendar month during which the first day of Contract Year "*y*" occurs.
CPI_B	is the CPI applicable to the calendar month during which the COD occurs.
$EAFCRP_m$	is the amounts to which Sponsor is entitled on account of the monetization of Environmental Attributes and Future Contract Related Products, as set forth in Sections 2.10 and 2.11.

EXHIBIT K
ARBITRATION PROCEDURES APPLICABLE TO SECTIONS 1.7, 1.8 AND 1.9

The following rules and procedures (the "**Rules**") shall govern, exclusively, any matter or matters to be arbitrated between the Parties under Section 1.7 or 1.8 of this Agreement.

1. **Commencement of Arbitration** – If the Parties and, at the Sponsor's option, all ESFA Suppliers required by the Sponsor to participate, have been unable to reach agreement as contemplated in Section 1.7 or 1.8 of this Agreement, as applicable, then the Sponsor shall commence arbitration by delivering a written notice (the "**Request**") to the Supplier and such ESFA Suppliers required by the Sponsor to participate (collectively the "**Suppliers**"). If the Sponsor has not already done so, the Sponsor shall then deliver to the Suppliers the names of such ESFA Suppliers. Within twenty (20) days of the delivery of the Request, the Sponsor shall deliver to the Suppliers a written notice nominating an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. Within twenty (20) days of the receipt of the Sponsor's notice nominating its arbitrator, the Suppliers shall by written notice to the Sponsor nominate an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. The two (2) arbitrators nominated shall then select a chair person of the arbitration panel (the "**Arbitration Panel**") who shall be a former judge of a Superior Court or appellate court in Canada.

2. **Application to Court** - If the Suppliers are unable to agree on the nomination of an arbitrator within twenty (20) days of the receipt of the Sponsor's notice nominating its arbitrator, any of the Suppliers or the Sponsor may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator. If the two (2) arbitrators are unable to agree on a chair person within thirty (30) days of the nomination or appointment of the Supplier's arbitrator, any of the Suppliers or the Sponsor may apply to a judge of the Superior Court of Justice of Ontario to appoint the chair person.

3. **General** - The Arbitration Panel, once appointed, shall proceed immediately to determine the Replacement Provision, as the case may be, in accordance with the Ontario *Arbitration Act*, 1991 and, where applicable, the Ontario *International Commercial Arbitration Act*, it being the intention of the Sponsor and the Supplier that there be, to the extent possible, one arbitration proceeding and hearing to determine the Replacement Provision. Unless otherwise agreed by the Parties, the Arbitration Panel shall determine the conduct of the arbitral proceedings, including the exchange of statements of claim and defence, the need for documentary and oral discovery and whether to hold oral hearings with a presentation of evidence or oral argument so that the award may be made within the time period set out below. Each of the Suppliers shall have a right to participate in the arbitration proceeding.

4. **Consolidation** – The Parties agree that should the Arbitration Panel determine that the Replacement Provision needs to be determined through more than one (1) arbitration proceeding, then the Parties agree that the Arbitration Panel shall determine whether the arbitration proceedings shall be consolidated, conducted simultaneously or consecutively

or whether any of the arbitration proceedings should be stayed until any of the others are completed.

5. **Award** - The award of the Arbitration Panel, which shall include the Replacement Provision, shall be made within six (6) months after the appointment of the Arbitration Panel, subject to any extended date to be agreed by the Parties or any reasonable delay due to unforeseen circumstances.

6. **Costs** – The Parties shall pay their own costs of participating in the arbitration proceedings.

7. **Fees** - Each of the arbitrators on the Arbitration Panel shall be paid their normal professional fees for their time and attendances, which fees together with any hearing room fees, shall be paid by the Sponsor.

8. **Computation of Time** - In the computation of time under these Rules or an order or direction given by the Arbitration Panel, except where a contrary intention appears, or the parties otherwise agree:

a) where there is a reference to a number of days between two events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words "at least" are used;

b) statutory holidays shall not be counted;

c) where the time for doing any act or any order or direction given by the Arbitration Panel expires on a day which is not a Business Day, the act may be done on the next day that is a Business Day; and

d) service of a document or notice or any order or direction given by the Arbitration Panel made after 4:00:00 p.m. (Toronto time), or at any time on a day which is not a Business Day, shall be deemed to have been made on the next Business Day.

9. **Place of Arbitration** - The arbitration, including the rendering of the award, shall take place in Toronto, Ontario, which shall be the seat of the proceedings. The language to be used in the arbitration shall be English.